CLERK'S OFFICE 18820

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 408. 161.

T. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL FOR THE DISTRICT OF MINNESOTA, AND THOMAS H. CROSWELL, APPELLANTS,

vs.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA S. FLINN, AND TEMPLE E. DORR.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED SEPTEMBER 4, 1902.

(22,903.)

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1901, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit, the sixth day of May, A. D. 1901, before the Honorable Walter H. Sanborn and the Honorable Amos M. Thayer, circuit judges, and the Honorable Elmer B. Adams, district judge.

Attest:

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-second day of December, A. D. 1900, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell were appellants, and Simon J. Murphy, George O. Robinson, Elisha A. Flinn, and Temple E. Dorr were appellees, which said transcript of record is in the words and figures following, to wit:

b United States circuit court, district of Minnesota, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. FLINN, and TEMPLE E. DORR, complainants,
vs.
P. H. KIRWAN, UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and THOMAS H. Croswell, defendants.

M. H. Standford, Duluth, Minnesota, solicitor for complainants.

R. G. Evans, U. S. attorney, St. Paul, Minnesota, John R. VanDerlip, Minneapolis, Minnesota, and W. F. Bailey, Eau Claire, Wisconsin, solicitors for defendants.

Pleas in the United States circuit court, district of Minnesota, fifth division, in the above-entitled cause.

Be it remembered that on the 21st day of December, A. D. 1896, there was filed with the clerk of said court, by solicitor for complainants, the bill of complaint in said cause; and that on subsequent dates, as specified in the indorsements following each, other pleadings and documents in said cause as they appear in this record were filed with said clerk; and that other proceedings were had in said cause, as also appear in this record; which said bill of complaint, other pleadings and documents, and proceedings are, in words and figures, as follows, to wit:

United States of America.
United States Circuit Court, District of Minnesota,
Eighth Judicial Circuit, Fifth Division. 1

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple O. Dorr, Complainants,

~~In Equity~~. vs.

P. K. Kirwan, United States Surveyor General for the District of Minnesota and Thomas Coaswell, Defendants.

In Equity

To the Judges of the above entitled Court sitting in Chancery:

Come now your orators above named and for their bill of complaint herein aver:

That your orators Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple O. Dorr, complainants herein, are all citizens and residents of the State of Michigan; that P. K. Kirwan, the above named defendant, and Thomas Coaswell defendant are both citizens and residents of the State of Minnesota, and P. K. Kirwan is United States Surveyor General of the State of Minnesota. 2

Thereupon, your orators aver that they are the owners in fee of all the certain tracts or parcels of land situated in St. Louis County, State of Minnesota, in township fifty-seven (57) north of range seventeen (17) west of the fourth principal meridian described as follows:

Commencing at the southwest corner of lot four (4) of the northwest quarter (NW ¼) of section one (1), and running thence north on the section line between said section one (1) and two (2) and to the northwest corner of said section one (1); thence west on the north line of said township to a point where said town line first meets the shore of Cedar Lake; thence turning south and following the shore of said lake to a point where the south line of said lot four (4) in said section one (1) extending westerly into said section two (2) first meets the water of said lake; thence easterly on said 3

last mentioned line to the place of beginning, the same being lots one (1), two (2) and three (3) of said section two (2) according to the government plat thereof; also commencing on the west shore of said lake at a point in said section three (3) where the west shore of said lake crosses said north town line; thence following said town line to the north east corner of lot two (2) of section four (4); thence running southerly on the east line of said lot two (2) in said section four (4), to the southeast corner thereof; thence westerly along the south boundary line of said lot two (2) to the southwest corner
4 thereof, thence southerly and to the centre of said section four (4); thence southeasterly on a straight line from (~~from~~) the centre of said section to the southeast corner thereof, until it intersects the westerly shore of said lake on said section four (4), thence in a northerly direction along the shore of said lake to the place of beginning, the same being lots one (1) and two (2) of section three (3), lot one (1) of section four (4) and a portion of lots six (6) seven (7) and the whole of lot eight (8) in said section four (4); also commencing at a point in the section line between sections four (4) and nine (9) at a point where the westerly shore of said lake crosses said line thence westerly on said section line, and to the
5 northwest corner of section nine (9) thence south on the west line of said section line to the southwest corner of the northwest quarter (NW ¼) of the southwest quarter (SW ¼) of said section nine (nine) (9); thence following the south line of said last described line and the extension thereof until it intersects the centre line running north and south through section ten (10); thence north to the centre of said section ten (10); thence easterly on the centre line of said section ten (10) to the northwest corner of the southwest quarter of section eleven (11); thence south on the west line of section eleven (11) to the southwest corner of the northwest quarter (NW ¼) of the southwest quarter (SW ¼) of said section eleven (11); thence east to the southeast cor-
6 ner of the northwest quarter (NW ¼) of the southwest quarter (SW ¼) of said section eleven (11); thence north until it intersects the southerly meander line of said lake; thence turning at right angles to said meander line and run to the shores of said lake thence westerly and following the shores of said lake to the place of beginning; that annexed hereto and made a part hereof and hereby referred to and marked Exhibit "D" is a plat of said land as near as your orators are able to determine the same; said land of your orators being marked in red and blue thereon:

That said lands prior to the matter and things hereinafter set forth were owned by the Government of the United States and were unsurveyed Government lands.

That pursuant to a contract duly made by and between the said United States Government and one Henry S. Howe, as deputy surveyor of the United States, bearing date April 26, 1876. All of said lands in said township fifty-seven (57) north of range seventeen (17) west, were surveyed which survey was completed on the 30th day of June of the same year, and the record of said survey and the field notes thereof 7
were duly approved by the Surveyor General of the United States on August 7, 1876. That from the field notes of said survey the plat of said township was duly made by the Surveyor General and submitted to the Commissioner of the General Land Office of the United States for his approval. That prior to the approval thereof and on the.....day of .....1879, complaint was duly made and filed in the department of the said United States General Land Office questioning the accuracy and good faith of said survey and requesting that the said department of the General Land Office examine into the same and suspend approval of the said plat pending such examination. That on the 11th day of June 1879, the Commissioner of said United States Gen- 8
eral Land Office denied this application, and thereupon said plat was approved notwithstanding said complaint by the proper officer of said Government of the United States, and the said plat was thereupon filed and recorded in the office of the Surveyor General of the United States of the District of Minnesota, and thereupon became and ever since, and now is, the official Government plat of said township, a true and correct transcript of which is hereunto annexed marked Exhibit "A" hereto referred to and made a part hereof and that the same is the only official Government plat of said township ever made or adopted by the government of the United States, or any of its officers thereof. That after the 9
approval and recording of said plat as aforesaid, and before the sale and disposal of any of the land in said township a duly certified copy of said official plat was made and filed in the office of the Commissioner of the General Land Office of the United States at Washington, D. C. and in the local United States land office at Duluth, Minnesota, all of said lands being then and now situated in the Duluth land district of said State.

That after the approval and recording of said Govern-

ment plat as aforesaid, and after copies thereof had been duly filed as aforesaid, and prior to April 1, 1887, all of the lands in said township were sold and disposed of by the government of the United States according to said official Government plat, and patents of said lands were duly issued therefor (the) the several purchasers thereof according to said plat.

Your orators further aver that said survey and the field notes thereof are and were inacurate and the said official
10 plat made from said field notes does not correctly delineate the sub-divisions of land in said township, or the true location of the land and water therein. That a large portion of the land in said township sold by the United States as aforesaid, according to said official plat as land yet is covered by the waters of deep and permanent lakes existing in their present form and depth at the time said survey was made and from time immemorial. That a considerable portion of the land above described, purchased by your orators as aforesaid and now owned by them, to-wit, the north half (N ½) of the south half (S ½) of said section nine (9) is, and was, at the time of said survey and was from time immemorial covered by the waters of a deep and permanent lake and
11 was purchased by your orators as land in reliance upon said official plat reference being had not only to said Exhibit "A" but also to Exhibit "D;" that your orators also purchased other lands in said township portions of which they are informed and verily believe are covered with water of deep and permanent lakes existing from time immemorial in their present form. That a considerable portion of the land of said township sold by the Government of the United States as aforesaid, according to said Government plat, the boundaries of which are the waters of said Cedar Island Lake, and said official plat does not correctly delineate or locate, and does not correctly represent the location of the
12 waters of said lake. That the lake is much smaller than it is made to appear by said official plat and that several fractional lots of your orators of which said lake is the boundary are much larger than appears from said plat and others much smaller.

That the United States in selling the land in said township according to said official plat has sold much more water as land, that is, land covered by the waters of deep and permanent lakes, than it has sold of land as water, that is, appearing on said official plat as water, yet, as a matter of

fact, no water exists on portions thereof. That annexed hereto and marked Exhibit "D" is a plat of said township showing as near as can be determined without actual Government survey thereof, as your orators are informed and verily believe, that actual locations of the various bodies of water in said township including that of Cedar Island Lake. That said Exhibit "D" is hereby referred to and made a part thereof.

Your orators further aver that the actual boundaries of said Cedar Island Lake are represented on said Exhibit "D" 13
by the red lines surrounding the words "Cedar Island Lake." That the boundaries of said Cedar Island Lake, as represented on said official plat, is represented on said Exhibit "D" by the shaded lines surrounding the said red line boundary of said Cedar Island Lake, as represented on said Exhibit "D" and corresponding to the same on said Exhibit "A." That the land marked in blue between said shore line and said red line are the lands of your orators herein in dispute, purchased by them as hereinafter set forth and which defendant now claims to be unsurveyed Government land as hereinafter set forth, and that said lands so marked blue owned by your orators as aforesaid, and lying between the
actual waters of said Cedar Island Lake, designated by said 14
red line and the boundary line of said lake, as appears by said official plat, exceed in sum the value of more than two thousand dollars ($2,000).

Your orators further aver that after said lands in said township had been surveyed and the official plat thereof adopted, approved and filed as aforesaid, the lands hereinafter described were purchased from the Government of the United States and patent therefor issued according to said official government plat of the land hereinafter described and on the dates hereinafter stated. On the 18th day of December 1882, Morris Thomas purchased the southwest
quarter (SW ¼) of northwest quarter (NW ¼) of section nine 15
(9), and lots one (1) two (2) and three (3) of section two (2) and a patent was thereupon issued to said Thomas, a copy of which patent is hereunto annexed marked Exhibit "C."

On the 29th day of December 1879 James H. Ruttle purchased lots one (1) and two (2) section ten (10), and a patent therefor was issued to said Ruttle, a copy of which patent is hereunto annexed marked Exhibit "E." That James H. Ruttle purchased the southeast quarter of the northwest

quarter and the northeast quarter of the southwest quarter of said section ten and a patent therefor dated March 30, 1883 was issued to him by the Government of the United States a copy of which is hereunto annexed marked Exhibit "K."

That Addison G. Petrie purchased of the Government of the United States lot one (1), section three (3), lot eight (8) section four (4), and lot four (4) section nine (9); and on the 20th day of February 1882, a patent therefor was duly issued
16 to said Petrie, a copy of which patent is hereunto annexed and marked Exhibit "F."

That on the 20th of February 1882, Henry Koecher purchased lot two (2), section three (3), lot one (1) section four (4), and a patent therefor was issued to said Koecher, a copy of which patent is hereunto annexed marked Exhibit "G."

That on the 29th ~~day~~ of May 1882, James B. Price purchased lot three (3), section 11 (11), lots three (3) and four (4) section ten (10) and a patent therefor was thereafter issued to said Price; that said last mentioned patent has been
17 mislaid or lost and your orators have not been able to find same after diligent search, but on the trial of this action or in interlocutory proceedings thereof where it becomes necessary to show title your orators will produce said patent or a duly certified copy of the same.

That on the 22nd of December, 1882, Robert Pratt purchased lots one (1) and two (2), section nine (9) and a patent was duly issued therefor, but said patent has also been lost or mislaid, but your orators will produce the orginal or a duly certified copy when needed.

That on the 20th ~~day~~ of February 1882, a patent of lots
18 two (2), three (3) and four (4) of section one (1) was duly issued to Eric Larson, a true and correct copy of the record of said patent being hereunto annexed and marked Exhibit "H" and said patent has been recorded in the office of the register of deeds of St. Louis County, Minnesota.

That the Government of the United States after a survey of said land and prior to April 7, 1882, conveyed to Charles Beaulion lots five (5) six (6) and seven (7) of section four (4). That all of said described copies of patents are prayed to be read as a part hereto and are hereby referred to.

Your orators further aver that they derive title to said lands as follows: A power of attorney dated November 30, 1879, from Addison G. Petrie to Columbus G. Chandler with full power to said Chandler to sell and convey said lot one (1) section three (3), lot eight (8) section four (4) and lot four (4) section nine (9). Warranty deed from Addison G. Petrie and wife by Columbus G. Chandler, attorney in fact, conveying the last above described lands to Philip M. Graff and Daniel E. Little. Warranty deed dated April 11th, 1883, executed by Philip ~~H.~~ M. Graff and Daniel E. Little conveying said last described land to Simon J. Murphy. Warranty 19
deed dated February 16, 1884, from Morris Thomas and wife to Simon J. Murphy conveying lots one (1) two (2) and three (3) of section two (2). Power of attorney from Henry Koecher and wife to Columbus G. Chandler as attorney in fact with power to convey lot two (2) section three (3), and lot one (1) section four (4), ~~said~~ Henry Koecher and wife by Columbus G. Chandler, attorney in fact, warranty deed to Philip M. Graff and Daniel E. ~~Little~~ dated May 26, 1880, conveying said last described lands to Philip M. Graff and Daniel E. Little. Warranty deed dated April .... 1883, conveying said last above described lands to Simon J. Murphy. Warranty deed from James B. Price and wife dated 20
August 16, 1882, conveying lot three (3) section eleven (11), lots three (3) and four (4) section ten (10) to John McDougall. Warranty deed from John McDougall dated June 14, 1883, conveying said last above described lands to the C. M. Nelson Lumber Company. Warranty deed from the C. M. Nelson Lumber Company dated December 29, 1883, conveying said last above described lands to Simon J. Murphy. Warranty deed dated January 30, 1880, executed by James H. Ruttle conveying lots one (1) and two (2) and the southeast quarter of the northwest quarter and the northwest quarter of the southwest quarter section ten (10) to Charles A. Moore. Warranty deed from Charles A. Moore and wife dated January 30, 1880, con- 21
veying said last above described lands to Daniel E. Little and Philip M. Graff. Warranty deed dated January 28, 1880, from Daniel E. Little and Philip M. Graff to Simon J. Murphy conveying the last above described lands. Special warranty deed from Robert Pratt dated December 22, 1881, conveying to Scott Griswold lots one (1), two (2) and three (3) section nine (9). Warranty deed from Scott Griswold and wife dated October 5, 1883, conveying said last above described lands to Simon J. Murphy. Patent from the Gov-

ernment of the United States dated October 3, 1888, to Thomas W. Finn conveying lots five (5) six (6) and seven (7) in section four (4). Warranty deed from Thomas W. Finn to John A. Kimberly dated April 16, 1883, conveying lots five (5) six (6) and seven (7) of said section four (4). Warranty deed from John A. Kimberly and wife to the Water Power Company of Cloquet dated February 16, 1883, conveying the lands (alst) above described. Warranty deed from the Water Power Company of Cloquet to Security Bank of Minnesota dated April 25, 1891, conveying lands last above
22 described. Deed from Security Bank of Minnesota dated December 23, 1891, conveying said lands last above described to James T. Hale. Deed from James T. Hale and wife dated Jan. 12, 1892, (covering) the lands last above described to the Security Land & Exploration Company. Deed from the Security Land & Exploration Company to the plaintiff in this action conveying all of lots three (3), five (5), six (6) and seven (7) lying on the northeasterly side of a line drawn from the centre of said section four (4) to the southeast corner of said section. Deed from Simon J. Murphy of all the lands hereinbefore described to Temple E. Dorr of a one-sixth (1-6) undivided interest; George O. Robinson one-
23 sixth (1-6) undivided interest and a contract to Elisha H. Flinn for the sale of an undivided one-sixth (1-6) interest. That the lands hereinbefore described were conveyed to the said plaintiffs according to the Government plat of said lands and all are situated in said township fifty-seven (57) north of range seventeen (17) west.

Your orators further aver that they became the owners of sail land by virtue of several mesne conveyances from the Government of the United States through said respective patentees to themselves. That they paid a valuable consideration for each of said respective parcels of land having purchased said lands on an actual estimate of the pine timber at
24 the time of said purchase standing on each particular description thereof and extending to the shores and actual waters of said Cedar Island Lake and to the centre of said lake. That having purchased the same in good faith believing that the respective grantors had good and perfect title to the same and to the whole thereof extending to the actual waters and shores of said lake and to the centre line of said lake and in reliance upon said Government plat. That they had no knowledge of the inaccuracy of the official survey of said township or that there was any fraud in the making of said

survey or that any fraud or inaccuracy was claimed in relation thereto at the time they made said purchase or at any other time until they learned of the application for a resurvey of said land as hereinafter set forth.

That your orators at the time they purchased said land were and now are the owners of a large amount of other lands and of pine timber standing thereon lying in township fifty-eight (58) north of range seventeen (17) west, and north of the waters of said Cedar Island Lake and the estimated amount of timber thereon at the time of said purchase and which now actually exists thereon being about sixty million (60,000,000) feet. That the said Cedar Island Lake when they purchased the lands hereinbefore particularly described and marked blue and red on said Exhibit "D" was the boundary of the same and the principal consideration that moved your orators to purchase the land so marked red and blue was that the pine timber so owned by them in township fifty-eight (58) range seventeen (17) west as aforesaid, could be lumbered and placed in said lake and through its outlet floated down the St. Louis River to market. That at the time the said purchase was made there was no other feasible means of transporting said timber to market.

Your orators further aver that the low land lying around said lake and bounded by the waters thereof which was of no particular value for pine timber was purchased by your orators in order that they might be able to construct a dam at the inlet of said lake to aid in transporting said timber to market. That the greater portion of said lands marked in blue and red on said Exhibit "D" is now and was at the time of said purchase covered with valuable pine timber. That there is not now any feasible route to transport the timber of your orators now standing on said lands herein particularly described and on your orators' lands in township fifty-eight (58) range seventeen (17) west, to market except by the water of said Cedar Island Lake and its outlet, unless your orators transport the same by rail from the railroad constructed near said lands long after your orators purchased the same. That the timber now owned by your orators, of which the waters of said Cedar Island Lake and its outlet are the only possible route of transportation to market, except by rail as aforesaid, is estimated at many million feet (feet), and the actual amount of said timber now standing upon said land herein particularly described is at least sev-

enty-five million feet as near as your orators can estimate the same, and is of the value of more than two hundred thousand dollars.

Your orators aver that some time prior to June 30, 1892, and during said year G. G. Burns, Henry Wickey, William B. Douglas, James A. Raab and Fred Nelson well knew that the lands marked blue on said Exhibit "D" as aforesaid, and herein particularly described were claimed by your orators in fee simple and that your orators became the own-
28 ers thereof under the circumstances as hereinbefore particularly described and that your orators had purchased the same relying on said Government plat believing that the said respective parcels of land were bounded by the actual shores of said lake and were owned by your orators to the centre of said lake entered upon various portions of said lands above designated in blue on said Exhibit "D" claiming the same to be unsurveyed unoccupied Government lands and they still occupy the same as your orators are informed and believe and on the 30th day of April, 1892, they jointly petitioned the then Surveyor General of the United States for the District of Minnesota that an accurate re-survey of said township fifty-eight (58) range seventeen (17) west be
29 made, a copy of which petition is hereunto annexed and made a part hereof and marked Exhibit "C" and hereby referred to. That said petitioners now have no interest or property in said land and never had any valid claim or interest therein [illegible] to any part thereof. That on the presentation of said petition said Surveyor General recommended to the Commissioner of the General Land Office of the United States that said petition be allowed.

Your orators aver that the hearing of said petition was ex parte; that your orators had no opportunity to be heard thereon. Your orators further aver that the Honorable S.W. Lamorieux, Commissioner of the General Land Office of the
30 United States on the 6th day of October, 1893, after a full consideration of the whole matter disallowed said petition and held that all the lands in said township had been disposed of by the Government of the United States and that said lands marked blue as aforesaid on said Exhibit"D" were not Government lands and that the Government of the United States had no jurisdiction over the same. An appeal was thereupon had by said petitioners to the Secretary of the Interior of the United States and such proceedings were thereafter had that on October 31, 1893, the Commissioner

of the General Land Office made and transmitted to the United States Surveyor General of the District of Minnesota an order for a re-survey of the lands herein described, a true and correct copy of which order as served on your orators by the then Surveyor General is hereunto annexed marked Exhibit "I" and made a part hereof and hereby referred to. That an appeal was thereafter taken to the Secretary of the Interior of the United States and such proceedings were thereafter had that on the 5th day of November, 1896, an order was made by E. F. Best, Acting Commissioner of the United States Land Office, and transmitted to the United 31
States Surveyor General for the State of Minnesota, ratifying and confirming such order of October 31, 1895, a true and correct copy of said order of November 5, 1895, as served on your orators by said defendant is hereunto annexed marked Exhibit "2" made a part hereof and hereby referred to. That the said order of re-survey of October 31, 1895, and the order in confirmation therof dated November 5, 1896, are null and void and all actions taken or to be taken by the said Surveyor General of the United States Land Office, the defendant herein, pursuant thereto are without authority of law and are in violation of the rights of your orators for the reasons herein set forth.

32

And your orator is also informed and verily believes that the said Surveyor General has already let a contract for the survey of said land to one Thomas Coaswell subject to certain directions from the Commissioner of the General Land Office and that your orators really believe that said Coaswell who is prayed to be made a party defendant herein is about to commence a survey of the same.

Your orators further aver that by a new survey of said lands your orators will be put to great and vexatious litigation in making proof of their title in actions against ~~said~~ parties who are wholly irresponsible.

33

That a very large amount of the timber standing as aforesaid on the land of your orators and owned by them will be destroyed in the making of such proposed survey and the remainder thereof exposed to damage by fire by reason of said re-survey and your orators will be thereby irreparably injured.

Your orators further show that in the petition for said re-survey and in all proceedings relating thereto your orators and neither of them and none of the respective patentees of

said lands or the owners thereof in your orators' chain of title as aforesaid, were charged with fraud in relation to said original survey or the making of said official plat; neither were they charged with any knowledge of said fraud or of any fraud in connection with said survey.

That pursuant to said petition and the said several orders so made and transmitted as aforesaid, the said defendant assuming to act as the Surveyor General of the United States for the District of Minnesota without authority of
34 law and in violation of the rights of your orators is now about to let a contract for a re-survey of the lands first herein particularly described and other lands and to cause the same to be surveyed assuming to act for and in behalf of the United States Government, and the said defendant, assuming to act as such Surveyor General and in behalf of the Government of the United States will let such contract and cause said survey to be made, or survey, or cause the same to be surveyed, unless restrained by an injunction of this court.

That the threatened action by the said defendants is unauthorized by law and is in violation of the rights of your
35 orators so far as it relates to the lands of your orators so designated in said Exhibit "D" in red and blue the same being a very large portion of the lands so sought to be re-surveyed. That the said defendant, said Surveyor General, has no jurisdiction or authority to survey said lands, or cause same to be surveyed, or to enter into any contract with any person to survey said lands or to perfect any contract for the survey of said lands. That in making the survey so threatened as aforesaid very much valuable timber on your orators' lands will necessarily be cut down and destroyed and the remainder thereof will be liable to injury by fire by reason of the cutting of said timber in the making of said survey and your orators will be irreparably injured thereby.
36

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed for and which they can only have in a court of equity and that he may full, complete and perfect answer make to the said several matters and that the said P. K. Kirwan, Surveyor General, his agents, attorneys, solicitors, and servants may be restrained by the order and injunction of this Honorable Court from entering into any contract for the survey of the lands herein described, or from surveying

the same, or from taking any action for a survey of said lands or any part thereof, and that boundaries of said lands of your orators may be defined and set out in the decree and order of this Honorable Court and that all necessary direction may be given them for that purpose and to establish the boundaries of said lands and that your orators may be protected in the use and enjoyment of such lands so owned by them as aforesaid extending to and including the shores of said Cedar Island Lake and to the centre of said lake, and that said defendant and his successors in office may be perpetually enjoined from letting said contract for the 37
survey of said land or any part thereof, and from surveying the same or any part thereof, and that your orators may have such other and further relief as to this Court may seem meet.

May it please your Honors to grant unto your orators a writ of injunction, or other proper process, against said defendant restraining and enjoining him from any further action towards the perfection of any contract for the survey of said land, or for the making of any contract for the surveying of the same, or any part thereof, until the termination of this suit.

And may it please your Honors to grant unto your orators 38
a writ of subpoena of the United States of America issued out of and under the seal of this Honorable Court directed to the said P. K. Kirwan, said defendant, commanding him on a certain day therein to be named and under certain penalty therein to be stated to answer all and singular the premises, and to do and perform and abide such further orders, directions and decrees as may be made against them and your orators as in duty bound will ever pray.

M. H. STANFORD,
Solicitor for Complainants, 600 & 601 Torrey Bldg.,
Duluth, Minn.

EXHIBIT A.

United States Land Office, 39
Duluth, Minn., Dec. 19, 1896.

The records of this office show that the plat of Tp. 57 N., R. 17 W. 4 p. m. was filed for record August 24th, 1876, and that all Government lands therein have now been appropriated; that since March 8, 1887 there has been no entries allowed of record, there being no land subject to entry since said date.

(Signed) A. J. TAYLOR,
Register.

1883

V. 1875 P 117

certify that the abov
this Office and the
th said original
Surveyor General
St. Paul May

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EXHIBIT "C."

In the matter of the application for a re-survey of township 57, north of range 17 west, St. Louis County, Minnesota:

To the Honorable James Compton, United States Surveyor General, for the District of Minnesota:

The petition of G. G. Burns, Henry Wickey, Wm. B. Douglass, James A. Robb and Fred Nelson respectfully represents that they are citizens of the United States, and 49
of the State of Minnesota, and entitled respectively to enter the unappropriated public land of the United States; that they have (serviously) and in good faith located upon, improved and occupied, and still continue to improve and occupy several parcels of the Government land hereinafter described, situated in said township and range, in the State of Minnesota and being portions of the land shown on the map of a portion of said township hereto attached, which is marked "Exhibit A," and made a part hereof, which lie between actual shore line of the said lake as shown on the official Government map of said township the location or which is shown on said Exhibit "A" by the irregular red 50
line surrounding said lake, as shown in said Exhibit "A." That all of said land is dry land and mostly covered with timber. That they have respectively carefully examined the condition of said land, and that they verily believe that the shore line of said lake is as shown on said Exhibit "A," and always has been so. And they verily believe that said Exhibit "A" correctly shows the location of said shore line. That no survey upon the ground of any part of said township, except the township line, was ever made and that the said Government map of the said township was and is a fraud upon the Government of the United States, of the public and of your petiioners; and your petitioners ask that an
accurate re-survey of said township be made and recom- 51
mend the appointment of W. B. Patton, county surveyor of St. Louis County, Minnesota, as a proper and competent and suitable person to make such re-survey.

Wherefore, your petitioners respectfully pray that such re-survey be ordered of the said township, and that such

other proceedings be had thereunder as is consistent with law and the practice of your department.

G. A. BURNS,
FRED NELSON,
HENRY WICKEY,
JAS. A. ROBB,
WALTER S. DOUGLAS,
WM. S. DOUGLAS.

Each of the petitioners swears that they have read the
52 petition and know the contents thereof, and that the facts therein stated are true.
Sworn to this 28 and 30 day of April, 1892, before

CARL GROVER,

Notary Public, St. Louis County, Minn.

Walter S. Douglas before
JOHN — WILLIAMS,
Notary Public, St. Louis County, Minn.

State of Minnesota,
County of St. Louis.—ss.

53 Personally appeared before me E. L. Raab, who deposes and says that he is familiar with the system of United States surveys, and that for years he has been engaged in surveying and running out lines, and examining lands, and that in the month of December 1891 he was engaged in examining and tracing the town and section lines for section two (2) three (3) four (4) nine (9) and ten (10) in township fifty-seven (57) range seventeen (17) west of the fourth principal meridian in St. Louis County, State of Minnesota and that he found the lake represented on the certified United States plat now in the local land office at Duluth, to be only about one-third (1-3) the size represented on said plat, and that the
54 land remaining unsurveyed around the lake amounted to about one thousand acres; and that he found by running a direct line from the section corner of 3-4-33 & 34 to the meander corner on the town line on the east side of the lake to bear south 80 degrees east, as represented on the accompanying pencil sketch, and that he did not examine the town line to the west of section 3. And that there is no evidence of any meander corner ever having been set between sections 2 & 3-3 & 4-4 & 9-9 & 10 and 3 & 10; and he further states that there has been no forest fires since the

Government survey, and that the timber is large and healthy at all of these points and convenient to where the corner came for bearing trees. And he further states that there is no evidence that the lake ever has changed since the original survey. The shore line on the northwest side is high and dry land, and gives no evidence that the lake ever has changed perceptibly for a term of many years. And affiant further states that he measured the lake shore from the meander corner on the town line east side of the lake through sections 2, 3, 4, 9 and 10, and measured south from the corner of sections 3 & 4 on the town line to and 55
across the lake and found the corner stake in the ice, to section 3, 4, 9 & 10. He ran west to the shore between sections 4 & 9 and east between sections 3 & 10 to the lake, and from these notes sketched in the lakes. That he is fully satisfied from all this information there is over one thousand acres of land there that was never surveyed, but is represented on the plat as being in the lake.

GEO. L. SPANGLER,

E. L. RAAB,

L. G. FAULKIM.

Subscribed and sworn to before me this 29th day of February, 1892. 56

GEO. L. SPANGLER,

Notary Public, St. Louis Co., Minn.

18835

Plat Exhibit A, Annexed

Exhibit C

FOLD OUT IS TOO LARGE TO BE FILMED

Plat Exhibit A, Annexed to

Exhibit C

EXHIBIT C.

United States of America, to Morris Thomas. Patent.

Filed for record May 24, 1887 at 9 o'clock, A. M. Book C of Patents, page 350.

The United States of America, to all to whom these presents shall come—Greeting:

Certificate No. 5796.

Whereas, Morris Thomas of Saint Louis County, Minnesota, has deposited in the General Land Office of the United Staes a certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said Morris Thomas according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of Section nine; the northwest quarter of the southwest quarter of section twenty-five; the southwest quarter of the southwest quarter of section thirty-four and the lots numbered one two and three of section two in township fifty-seven north of range seventeen west of the Fourth Principal Meridian in Minnesota containing two hundred and ten acres and eighty-five hundredths of an acre according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Morris Thomas. Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several act of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Morris Thomas and to his heirs, the said tract above described, to have and to hold the same, together with all of the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Morris Thomas and to his heirs and assigns forever. In testimony whereof, I Chester A. Arthur President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty-four, and of the independence of the United States the one hundred and eighth.

(Seal) By the President: CHESTER A. ARTHUR,

By P. L. JUDD, Asst. Sec'y.

Recorded Vol. 9, page 344. S. W. Clark, Recorder of the

70 ~~State of Minneso~~ta,
General Land Office.

Indorsed: Patent. United States to Morris Thomas.

State of Minnesota, County of St. Louis—ss.

I, Peter J. Borgstrom, Register of Deeds of said County, do hereby certify that the within is a true and correct copy of the records in my office as found in Book "C" of Patents on page 350. That I have compared such copy with the original record and that it is a correct transcript therefrom.

Dated this 11th day of June, A. D. 1895.

71 P. J. BORGSTROM,
Register of Deeds.

(Seal) By B. O. LOE, Deputy.

EXHIBIT "K."

Book A of Patents, page 268.

United States of America,
to
James H. Ruttle.

Filed for record April 21st, 1883 at 10 A. M. Patent.

72 The United States of America, to all to whom these presents shall come—Greeting:

Whereas, in pursuance of the Act of Congress, approved March 3, 1855, entitled "An act in addition to certain acts granting Bounty Land to certain officers and soldiers who have been engaged in the Military Service of the United States," there has been deposited in the General Land Office Warrant No. 36351 for 80 acres, in favor of Fitch R. Hunt, Private Captain Battle's Company, Tennessee Militia War, with evidence that the same has been duly located upon

the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of Section ten in Township fifty-seven north of range seventeen west of the fourth principal meridian in the District of lands subject to sale at Duluth, Minnesota, containing eighty acres according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General; the said warrant having been duly assigned to James H. Ruttle in whose favor said tract has been located.

Now, know ye, that there is therefore granted by the 73
Unted States unto the said James H. Ruttle as assignee as aforesaid, and to his heirs the tract of land above described.

To have and to hold, the said tract of land with the appurtenances thereof unto the said James H. Ruttle as assignee as aforesaid and to his heirs and assigns forever.

In testimony whereof, I Chester A. Arthur, President of the United States of America have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the thir-
tieth day of March in the year of our Lord one thou- 74
sand eight hundred and eighty-three and of the Independendence of the United States the one hundred and seventh.

By the President: CHESTER A. ARTHUR,

(Seal) By O. L. JUDD, Asst Sec'y.

S. W. CLARK,
Recorder of the General Land Office.

Recorded, Vol. 549, page 488.

Indorsed: United States of America to James H. Ruttle. 75

Patent.

State of Minnesota,
County of St. Louis—ss.

I, Peter J. Borgstrom, Register of Deeds of said County, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book "A" of Patents on page 268. That I have compared such copy with the

original record and that it is a correct transcript therefrom. Dated this 11th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.

(Seal) By B. O. LOE, Deputy.

EXHIBIT "F."

Book B of Patents, Page 577.

76 United States of America,
to
Addison G. Petrie.

Filed for record April 10" 1893, at 2 P. M. Patent.

The United States of America, to all to whom these presents shall come—Greeting:

Homestead Certificate No. 1006.
Application. 1540.

Whereas, there has been deposited in the General Land
77 Office of the United States, a Certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that, pursuant to the act of Congress approved May 20th, 1862, "To secure Homesteads to actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Addison G. Petrie has been established and duly consummated in conformity to law, for the lot number one of Section three, the lot number eight of Section four, and the lot number four of Section nine in township fifty-seven north of range seventeen west of the Fourth Principal Meridian in Minnesota, containing ninety-five acres and eighty-five one hundredths of an acre, according to the official plat of the survey of said land, returned to the Gen-
78 eral Land Office by the Surveyor General:

Now know ye, that there is therefore granted by the United States unto the said Addison G. Petrie the tract of land above described;

To have and to hold the said tract of land, with the appurtenances thereof, unto the said Addison G. Petrie and to his heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of February in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States for the one hundred and sixth.

By the President: CHESTER A. ARTHUR, 79
By W. H. COOK, Sec'y.
S. W. CLARK,
Recorder of the General Land Office.

(Seal)

Recorded Vol. 3, page 1.

EXHIBIT "G."

Book B. of Patents, page 576.

United States of America, Patent.
to
Henry Koecher. 80

Filed for record April 10" 1883, at 2 P. M.

The United States o fAmerica, to all to whom these presents shall come—Greeting:

Homestead Certificate No. 1004.
Application 1538.

Whereas, there has been deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that pursuant to the Act of Congress approved May 20th, 1862, "To secure Homesteads to actual settlers on the Public Domains," and the acts supplemental thereto, the claim of Henry Koecher has been established and duly consummated in conformity to law, for the lot number two of section three, and the lot number one of Section four, in township fifty-seven north of range seventeen west of the Fourth Principal Meridian in Minnesota, containing one hundred and five acres and thirty-five one-hundredths of an acre, according to the official Plat of the survey of said land returned to the General Land Office by the Surveyor General: 81

Now, know ye, that there is therefore granted by the United States unto the said Henry Koecher the land above described:

To have and to hold the said tract of land, with the appurtenances thereof, unto the said Henry Koecher and to his heirs and assigns forever.

In testimony whereof, I Chester A. Arthur, President of the United States of America have caused these letters to be made patent, and the seal of the General Land
82 Office to be hereunto affixed.

Given under my hand at the City of Washington the twentieth day of February in the year of our Lord one thousand eight hundred and eighty-two and of the independence of the United States the one hundred and sixth.

By the President: CHESTER A. ARTHUR,
(Seal) By W. H. COOK, Sec'y.

S. W. CLARK,
Recorder of the General Land Office.

Recorded Vol. 2, page 499.

83 EXHIBIT "H."

Book B of Patents, page 578.

Patent.

United States of America,
to
Eric Larson.

Filed for Record Apr. 10, 1883, at 2 o'clock P. M.

The United States of America, to all to whom these presents shall come—Greeting:

Homestead Certificate No. 1003.
84 Application 1537.

Whereas, there has been deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that, pursuant to the act of Congress approved May 20th, 1862, "To secure Homesteads to actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Eric Larson has been established and duly consummated in conformity to law, for the lots numbered two, three and four of Section one in township fifty-seven, north of range

seventeen west of the Fourth Principal Meridian in Minnesota, containing one hundred and twenty acres and ninety-four hundredths of an acre, according to the official Plat of the survey of the said land, returned to the General Land Office by the Surveyor General:

Now, know ye, that there is therefore granted by the United States unto the said Eric Larson the tract of land above described:

To have and to hold the said tract of land, with the appurtenances thereof, unto the said Eric Larson and to his 85
heirs and assigns forever.

In testimony whereof, I Chester A. Arthur, President of the United States of America have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twentieth day of February in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and sixth.

86

By the President: CHESTER A. ARTHUR,
(Seal) By W. H. COOK, Sec'y.

S. W. CLARK,
Recorder of the General Land Office.

Recorded Vol. 2, Page 498.

Indorsed: U. S. of A. to Eric Larson. Patent.

State of Minnesota,
County of St. Louis—ss.

I, Peter J. Borgstrom, Register of Deeds of said County, 87
do hereby certify that the within is a true and correct copy of the records in my office, as found in Book B of Patents on page 578. That I have compared such copy with the original record and that it is a correct transcript therefrom.

Dated this 11th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.

(Seal) By B. O. LOE, Deputy.

EXHIBIT "E."

Book B of Patents, page 307.

United States of America, Patent.
to
James H. Ruttle.

Filed for record April 21st, 1883, at 10 o'clock A. M.

88 The United States of America, to all to whom these presents shall come—Greeting:

Certificate No. 2086.

Whereas, James H. Ruttle of St. Louis County, Minnesota has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said James H. Ruttle according to the provision of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the lots numbered one and two of
89 Section ten in township fifty-seven north of range seventeen west of the Fourth Principal Meridian in Minnesota cotaining sixty-eight acres according to the official plat of the survey of said lands, returned to the General Land Office by the Surveyor General which said tract has been purchased by the said James H. Ruttle.

Now know ye, that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted and by these presents do give and grant unto the said James H. Ruttle, and to his heirs, the said tract above described:
90

To have and to hold the same ,together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said James H. Ruttle, and to his heirs and assigns forever.

In testimony whereof, I Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the thirtieth day of March in the year of our Lord one thousand eight hundred and eighty-three and of the independence of the United States the one hundred and seventh.

By the President: CHESTER A. ARTHUR,
(Seal) By O. L. JUDD, Asst Sec'y.

S. W. CLARK,
Recorder of the General Land Office.

Recorded Vol. 5, page 306. 91

EXHIBIT 1.

October 31st, 1895.

The U. S. Surveyor General,
St. Paul, Minnesota.

Sir: Referring to the records and papers in the matter of the hearing on the petition of G. A. Burns et al., received with your letter dated September 9th, 1895, an application for an oral argument by Copp & Luckett, attorneys for opposing claimants, was allowed and the hearing was set for October 23rd last (passed). At said hearing Mr. John R. 92
Van Derlip appeared in behalf of the petitioners and Copp & Luckett, attorneys for Murphy et al., were present and submitted argument on certain legal points involved in the case.

After a full presentation of views by the attorneys for contestants I concluded that a survey should be made of the public lands lying between the pretended old meander line of 1876 and the shore line of Cedar Island Lake in township 57 N., range 17 W., 4th principal meridian, State of Minnesota.

Therefore you will enter into a contract with a surveyor 93
of integrity and ability to survey the public land designated above; the expense of said survey will be chargeable to the appropriation for survey of public lands for the current fiscal year.

Briefly stated said survey will require:

1. Re-establishment of certain section, quarter section and meander corners on the north boundary of the township (57 N., R. 17 W.)

2. The temporary establishment of the corners of:
Sections 1, 2, 11 and 12;
Sections 11, 12, 13 and 14;
Sections 10, 11, 14 and 15;
Sections 9, 10, 15 and 16;
Sections 4, 5, 8 and 9 and the quarter section corners between sections 8 and 9, and 9 and 10.

5. The establishment of permanent meander corners and the survey and permanent marking of the meander line
94 of Cedar Island Lake, as given by the original field notes of Henry S. Howe, U. S. Deputy Surveyor, approved by the Surveyor General for Minnesota, August 19, 1876. For the sake of brevity and definite description, said established meander line will be known and described as the Old Meander Boundary between the patented land and the public land to be surveyed as herein provided for.

4. The establishment of proper permanent meander corners at ordinary high-water mark on the shore of Cedar Island Lake and the meandering of said shore line on the ground at ordinary high water mark.

95 5. The subdivision of all lands between the Old Meander Boundary and the ordinary high water mark of the lake.

The surveys specified in the first three of the above paragraphs will be made to conform strictly to the original field notes of said surveys, referred to in paragraph three, while all surveys on the lake side of the "Old Meander Boundary" will be made as directed by the Manual of 1894."

It is evident that the "Old Meander Boundary," when surveyed according to the original field notes, will not close on the meander corners. To provide for this contingency you will please give in the special instructions, definite and
96 detailed instructions (and an example illustrative of the same) to guide the deputy. This is a subject not mentioned or even referred to in the Manual or in any of the text books in general use; and as the requisite instructions for the execution of the work will require an unusual application of well known principles, it is possible your office assistants may be without the necessary information to prepare instructions which will pass a critical examination in this office and receive approval.

EXHIBIT 2.

November 5, 1896.

The U. S. Surveyor General:
St. Paul, Minn.

Sir: Office letter "E" dated October 31, 1895, authorized you to enter into a contract for survey of certain lands in township 57 N., range 17 W., 4th principal meridian, State of Minnesota.

January 2, 1896, Messrs. Copp & Luckett, attorneys for 97
Simon J. Smith and others in the case of Burns et al. vs. Murphy et al. filed an appeal from my action in ordering the survey mentioned above.

Office letter "E" of January 9, 1896, directed suspension of all proceedings in regard to the survey; and the appeal and all papers in the case were on April 22nd last (passed), submitted to the Honorable Secretary for his action thereon.

I am now in receipt of the letter and decision by the Secretary dated October 29, 1896, which concludes as follows:

"The Department will not, therefore, go into a discussion of the question of riparian proprietorship and it appearing 98
that counsel for the defendants admit that the facts alleged as a basis for the original ordering of a hearing are in fact true, the decision of your office appealed from is affirmed."

The propriety of my action in ordering the survey in question, having been affirmed as above, you will please notify the parties in interest (Messrs. Copp & Luckett excepted) of the action taken, and proceed to perfect the contract for the survey already authorized.

The rate of compensation to be allowed and the additional instructions requested in your letter dated November 7, 1895, will be made the subject of another communication.
99

A copy of the Secretary's letter is enclosed herewith.

Very respectfully,
E. F. BEST,
Acting Commissioner.

State of Minnesota,
County of St. Louis.—ss.

Mortimer H. Stanford being duly sworn deposes and says, that he is solicitor for the complainants in the above en-

titled action; that said complainants are all absent from the State of Minnesota; that deponent also has particular knowledge of the facts therein stated; that he has read the foregoing bill by him subscribed; that the same is true of his own knowledge except as to the matters therein stated to be on information and belief and as to these matter he believes them to be true.

MORTIMER H. STANFORD.

Sworn and subscribed to before me this 21st day of Dec. A.
100 D. 1896.

(Notarial Seal) OSCAR MITCHELL,
Notary Public, for St. Louis County, Minn.

Indorsed: Filed Dec. 21st, 1896. Oscar B. Hillis, Clerk. By L. Davies, Deputy.

United States Circuit Court, District of Minnesota, Fifth Division.

PRAECIPE FOR SUBPOENA.

101 Simon J. Murphy, Temple E. Dorr, George O. Robinson, Elisha H. Flinn, Complts.

In Equity. vs.

P. K. Kirwan, Surveyor General and Thomas Coaswell, Defts.

To the Clerk of said Court:

Please issue subpoena in the above entitled cause.

Dated at Duluth this 21st day of December., 1896.

M. H. STANFORD,
Solicitor for Complts.

102 Indorsed: Filed Dec. 21st, 1896. Oscar B. Hillis, Clerk. By L. Davies, Deputy.

United States of America, District of Minnesota, Fifth Division. In Equity.

The President of the United States of America to P. K. Kirwan as United States Surveyor General for the District of Minnesota, and Thomas Coaswell—Greeting:
You are hereby commanded to be and appear at rules, to

be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of February next, at the City of Duluth, then and there to answer the bill of complaint of Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, citizens of the State of Michigan, filed against you on the 21st day of December, A. D. 1896; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 21st day of December, 1896.

103

(Seal U. S. Cir. Ct.)

Issued at my office in the City of Duluth, under the seal of said Circuit Court, the day and year last aforesaid.

OSCAR B. HILLIS, Clerk.
By L. DAVIES, Deputy.

Memorandum: The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

OSCAR B. HILLIS, Clerk. 104
By L. DAVIES, Deputy.

M. H. STANFORD,
Complainants' Solicitor.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed chancery subpoena on the therein named defendant Thomas Caswell, whose true name is Thomas H. Croswell by handing to and leaving a true and correct copy thereof with him personally at 4 mi. E. of Eveleth in said District on the 23rd day of December, A. D. 1896.

105

R. T. O'CONNOR, U. S. Marshal.
By T. J. SHEEHAN, Deputy.

Fees, $28.66.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed chancery subpoena on the therein named defendant P. K. Kirwan as United States Surveyor General for the District

of Minnesota by handing to and leaving a true and correct copy thereof with him personally at St. Paul, in said District on the 22nd day of December, A. D. 1896.

R. T. O'CONNOR, U. S. Marshal.
By J. M. REDDING, Deputy.

Indorsed: Returned into the clerk's office and filed this 2nd day of January, A. D. 1897. Henry D. Lang, Clerk. By L. Davies, Deputy.

106

United States of America.

United States Circuit Court, District of Minnesota, Eighth Judicial Circuit, Fifth Division.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple O. Dorr, Complainants,

~~In Equity~~. vs.

P. K. Kirwan as United States Surveyor General for the District of Minnesota, and Thomas Coaswell, Defen-
107 dants. In Equity

The joint and several answer of the defendants P. H. Kirwan in the bill of complaint herein called P. K. Kirwan, and Thomas H. Croswell, in the complaint herein called Thomas Coaswell.

I.

The defendants admit the citizenship and residence of the parties as set out in said bill, and that the defendant Kirwan is United States Surveyor General of the State of Minnesota.

108 The defendants aver that said Kirwan was duly appointed such Surveyor General by the President of the United States, by and with the consent of the Senate of the United States, and was duly commissioned as such officer and has duly qualified as such and entered upon the discharge of the duties pertaining to said office and is now performing the same; that the defendant Thomas H. Croswell is a deputy surveyor of the United States duly appointed and authorized as such by a contract and bond, of which a copy is hereto attached, and made a part of this answer, and marked Ex-

hibit "A," which contract was duly approved by the Commissioner of the General Land Office, as provided by law.

II.

The defendants admit that the lands described in the complaint have been unsurveyed lands, owned by the Government of the United States; that on or about April 26th, 1876, a contract for the survey of all the lands in township 57 North of range 17 West in St. Louis County, Minnesota, was made by the Government of the United States with one Henry S. Howe as a deputy surveyor of the United States. 109

These defendants aver that said Howe never surveyed any of the lands in said township 57; that he ran the exterior boundaries of said township only and made no subdivision as required by his contract or rules and regulations of the General Land Office, or at all, within the boundaries of said township and that no government survey of the lands in said township has ever been made.

These defendants admit that said Howe fraudulently made and filed pretended field notes of a survey of said township and that a plat was thereafter made therefrom 110
and ~~and~~ approved by the Surveyor General for the District of Minnesota on August 7th, 1876, but the defendants aver that said field notes were false and fictitious and the plat thereon based was made from said field notes in the office of said Surveyor General and was and is false and incorrect.

The defendants admit that the Commissioner of the General Land Office approved said survey and plat after complaints were brought to his notice touching the accuracy thereof; but allege that said complaints were withdrawn by the person presenting them before such approval; they admit that Exhibit "A" attached to the bill is a substantially 111
correct transcript of said plat; and that said approved plat was thereafter certified and filed as alleged in said bill.

III.

These defendants deny that thereafter at any time all of the lands in said township were sold and disposed of by the government of the United States, but allege that about twelve hundred acres of land in sections 2, 3, 4, 9, 10 and 11 of said township 57 were never sold, disposed of or

patented by the Government, and are still unsurveyed land belonging to the Government of the United States, and lying between the shore of Cedar Island Lake and Government lots 1, 2, 3, 4, 5 and 6 in section 2, lots 1 and 2 in section 3, lots 1 to 8 in section 4, lots 1 to 4 in section 9, lots 1 to 4 in section 10, and lots 1, 2 and 3 in section 11, all inclusive, a part of which Government lots have been patented and conveyed to the complainants. That said unsurveyed land is the land referred to in Exhibit "A" attached to this answer and these defendants aver that by the plat made from the
112 field notes of said Howe all of said unsurveyed land is indicated as being a part of said Cedar Island Lake.

These defendants aver that none of the fractional lots conveyed to plaintiffs are smaller in area than as shown on said plat of said Howe survey.

IV.

The defendants admit that other deep and permanent lakes in different parts of said township which are not shown upon the plat of said Howe survey exist, and that the Government has patented territory covered by said lakes as land in accordance with the plat of said Howe survey.
113

V.

The defendants aver that the true relative size and the contour of said Cedar Island Lake is as shown by the plat hereto attached and marked Exhibit "B," and made a part of this answer, and that the land shown on said Exhibit "B" lying between the water line of said lake and the boundary line of the fractional lots surrounding the same is the twelve hundred acres of unsurveyed Government land herein referred to. These defendants admit that the portion of said land claimed by complainants is of greater value than two thousand (2,000) dollars.
114

VI.

These defendants deny any knowledge or information sufficient to form a belief as to the patenting of the Government lots shown upon the plat of said Howe survey, or of the mesne conveyances from the patentees thereof to the complainants, and put complainants to the proof thereof upon the trial of this action if they be so advised.

But these defendants expressly aver that no lands in sections 2, 3, 4, 9, 10 and 11 of said township 57 have ever been

patented by Government or conveyed to the complainants, or to any one except the fractional government lots in said sections as delineated upon the plat of said Howe survey.

And these defendants deny that they have any knowledge or information sufficient to form a belief as to what consideration, if any, was paid by the complainants, or any of them, for any conveyance to the complainants, or any of them, of any part of the lands described in the bill, or as to whether the complainants purchased any of said lands in good faith, or otherwise, or for the reasons stated in said bill, or otherwise. 115

VII.

These defendants aver that they are informed and believe that some time prior to June 30th, 1892, certain men settled upon the unsurveyed land hereinbefore described and they and others have since continued to occupy the same, at least in part.

VIII.

These defendants allege that they are informed and believe that in or about the month of June, 1892, certain of the 116 settlers upon said unsurveyed lands did file a petition with the Commissioner of the General Land Office at Washington, D. C., asking that said land be surveyed; that thereafter said petition was denied.

These defendants futher aver that on or about the 14th day of August, 1893, certain of the settlers upon said lands filed another petition with said Commissioner of the General Land Office praying that a hearing might be ordered to investigate the character of said lands and, if they were found to be unsurveyed land, that a survey thereof might be ordered.

On or about October 6th, 1893, said petition was denied 117 by the Commissioner; that the hearing upon said petition before said Commissioner was ex parte; on or about December 15th, 1893, an appeal from the said decision of said Commissioner was duly taken to the Secretary of the Interior; that upon said appeal the complainants in this action were represented by Messrs. Copp & Luckett, attorneys practicing before the departments of the United States at Washington, and opposed said appeal by oral argument and by written brief filed with the Secretary of the Interior; there-

after and on or about January 19th, 1895, the Secretary of the Interior duly filed his order reversing the decision of said Commissioner, and directing that a hearing be had to ascertain the facts in respect to such lands.

Said decision of the Secretary is duly reported in 20th Land Decisions at page 28, and reference is hereby made thereto for fuller information concerning the same.

On or about March 2nd, 1895, the complainants, by their
118 said attorneys duly made application to the Secretary of the Interior for a re-hearing upon said appeal, and on or about April 8th, 1895, and order was filed by the Secretary denying said application.

These defendants further aver, upon information and belief, that on the 12th and 13th days of June, 1895, the hearing ordered by the Secretary was duly had before the Surveyor General for the District of Minnesota, at the City of Duluth, Minnesota, and that at said hearing the complainants in this suit duly appeared by M. H. Stanford, their attorney and examined and cross-examined the witnesses
119 produced at said hearing; that thereafter the Surveyor General duly made and filed with the Commissioner of the General Land Office his report of said hearing and his recommendation that the land referred to be deemed unsurveyed government land, and that a survey thereof be ordered by the said Commissioner.

On or about the 16th day of September, 1895, the complainants in this action by M. H. Stanford, as one of their attorneys, appealed from the report and recommendation of the Surveyor General to the Commissioner of the General Land Office; said appeal was thereafter duly argued before said Commissioner and on October 31st, 1895, said Commis-
120 sioner made and filed his decision approving the report and recommendation of said Surveyor General and ordered that a survey of said lands in township 57 be made. From said order and decision of the Commissioner of the General Land Office the complainants in this suit thereafter duly filed and took their appeal to the Secretary of the Interior on or about January 2nd, 1896, and such proceedings were had therein, that on or about the 29th day of October, 1896, the Secretary of the Interior duly made and filed his decision affirming the decision appealed from.

A copy of said decision of the Secretary of the Interior is hereto attached and hereby referred to and made a part of this answer, and marked Exhibit "C."

Thereafter and in pursuance of said decision the Commissioner of the General Land Office made and transmitted to the defendant Kirwan, as United States Surveyor General, as aforesaid, his order for the making of a survey of said lands of which Exhibit "2" attached to the bill in this suit is a copy.

The defendants aver that pursuant to said order of No- 121
vember 5th, and not otherwise, the contract for a survey of said lands was made by said Surveyor General and the defendant Croswell as aforesaid.

And these defendants further aver that said Secretary of the Interior and Commissioner of the General Land Office had full and ample authority and jurisdiction to pass upon the questions presented to them in said proceedings, and to make the orders and decisions hereinbefore referred to, and each of them.

IX.

These defendants deny that a large, or any, amount of 122
timber standing on the lands of the complainants or the lands described in the bill will be destroyed or damaged in making said survey, and allege that said survey was already commenced at the time of the service of the order to show cause herein and was so far conducted and if continued, will be hereafter conducted, in accordance with the instructions prepared and delivered to said defendant Croswell by the Surveyor General, of which a copy is hereto attached, and hereby referred to and made a part hereof, and marked Exhibit "D."

X.

123

Except as hereinbefore averred or admitted, these defendants deny each and every allegation, matter and thing alleged or set out in said bill.

EDWARD C. STRINGER,
P. H. Kirwan United States Attorney, Solicitor for Defendants.
THOMAS H. CROSWELL,
P. H. KIRWAN,
JOHN R. VAN DERLIP, of Counsel.

State of Minnesota,
County of Ramsey—ss.

P. H. Kirwan, being first duly sworn, says, that he is one of the defendants named in the foregoing joint and several answer of himself and Thomas H. Croswell; that the contents of said answer, as far as concerns the acts and deeds of the defendants are true of affiant's own knowledge, and that what relates to the acts and deeds of any other person or persons, he believes to be true.

124 P. H. KIRWAN.

Subscribed and sworn to before me this 6th day of January, 1896.

HENRY D. LANG,
Clerk U. S. Circuit Court,
For the District of Minnesota.

Seal
U. S. Cir. Ct.
3rd Div.

State of Minnesota,
County of Hennepin—ss.

Thos. H. Croswell, being first duly sworn says that he is one of the defendants named in the foregoing answer, that
125 the contents of said answer, as far as concerns the acts and deeds of the defendants are true of affiant's own knowledge, and that what relates to the acts and deeds of any other person or persons, he believes to be true.

THOMAS H. CROSWELL.

Subsribed and sworn to before me this 7th day of January, 1897.

JOHN R. VAN DERLIP,
Notary Public, Hennepin Co., Minn.

EXHIBIT "A."

126

This agreement, made this tenth day of December, 1896, between the Surveyor General of the United States for Minnesota, acting for and in behalf of the United States, of the one part, and Thomas H. Croswell, Deputy Surveyor, of the other part—

Witnesseth, that the said Thomas H. Croswell, for and in consideration of the conditions, terms, provisions, and covenants hereinafter expressed, and according to the true intent and meaning thereof, doth hereby covenant and agree

with the said Surveyor General, in his capacity aforesaid, that he the said Thomas H. Croswell, in his own proper person, with the assistance of such chainmen, axmen, flag bearers, and moundmen as may be necessary, in strict conformity with the laws of the United States, the printed Manual of Surveying instructions as revised and approved June 30, 1894, and other surveying instructions issued by the Commissioner of the General Land Office, and with such special instructions as he may receive from the said Surveyor General in conformity therewith (all of said instructions to be taken and deemed a part of this contract), will well, truly, 127
and faithfully survey, mark, and establish all the boundaries and subdivisions and meander lines of the public lands situate in Secs. 2, 3, 4, 9, 10 and 11 in Township No. 57, N. R. 17 W. of the 4" principal meridian lying between the "Old Meander Boundary" of Cedar Island Lake, as given by the original field notes of Henry S. Howe, U. S. Deputy Surveyor, approved by the Surveyor General of Minnesota, Aug. 19, 1876, and the shore line of said Cedar Island Lake, and that he will complete these surveys in the manner aforesaid, and return the true and original field notes thereof to the office of the said Surveyor General on or before the first day of February next ensuing the date hereof, on penalty of for- 128
feiture, and paying to the United States the sum mentioned in the annexed bond, if default be made in any of the foregoing conditions. And it is further expressly stipulated and made a condition of this contract, that the surveys herein described shall not be commenced before the said Thomas H. Croswell shall have been officially notified by the said Surveyor General of the approval of this contract by the Commissioner of the General Land Office.

And the said Surveyor General, in his official capacity aforesaid, covenants and agrees with the said Thomas H. Croswell that on the completion of the surveys above named, in the manner aforesaid, there shall be paid to the said Thomas H. Croswell by the Treasury Department of the 129
United States, as a full compensation for all work performed under this agreement, at the rate of nine dollars for Base, Standard, Meridian, and Meander lines, seven dollars for Township lines, and five dollars for Section and connecting lines, except where the lines of survey pass over mountainous lands, or lands heavily timbered, or covered with dense undergrowth, and in such case at the rate of thirteen dollars for Base, Standard, Meridian, and Meander lines, eleven dollars for Township lines, and seven dollars for Section and

connecting lines, per mile, for every mile and part of a mile actually run and marked in the field, random lines and offsets not included. Estimated liability, $400.00.

Provided, however, that no payment shall be made until the plats and field notes of the survey executed under this contract shall have been accepted by the Commissioner of the General Land Office.

It is further agreed by and between the parties to this agreement that no accounts shall be paid unless properly certified by the Surveyor General (or his successor in office)
130 that the surveys are in accordance with the instructions herein referred to and the provisions of this agreement, and until approved plats and certified transcripts of field notes of the surveys for which the accounts are rendered are filed in the General Land Office.

And it is further understood and agreed by and between the parties to this agreement that the said surveys will not be approved by the said Surveyor General (or by his successor in office) unless they shall be found to be in exact accordance with the instructions hereinbefore specified: Provided, also, that no member of (or delegate to) Congress or subcontractor shall be admitted to any share or part of this contract or to any benefit to arise thereupon, and that no
131 payment shall be made for any surveys not executed by the said Deputy Surveyor Thomas H. Croswell in his own proper person.

In testimony whereof, the parties to these articles of agreement have hereunto set their hands and seals the day and year first above written.

PATRICK H. KIRWAN, (Seal)
U. S. Surveyor General for Minnesota.
THOMAS H. CROSWELL, (Seal)
U. S. Deputy Surveyor.

Signed, sealed and acknowledged before us:
BENJAMIN C. BALDWIN,
132 Residence: St. Paul, Minn.
JOHN A. LARSON,
Residence: St. Paul, Minn.
Witnesses to Surveyor General's Signature.
E. R. MOORE,
Residence: St. Paul, Minn.
IMSLEY SONER,
Residence: Minneapolis.
Witnesses to Deputy Surveyor's Signature.
Bond.

Know all men by these presents, that we, Thomas H. Croswell, of St. Paul, Minnesota, as principal, and Daniel M. Robbins, of St.Paul, Minnesota, and Charles A. Magnuson,of St. Paul, Minnesota, as sureties, are held and firmly bound unto the United States of America in the sum of eight hundred dollars, lawful money of the United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, and each and every one of us and them, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this 10th day of December, 1896. 133

The condition of the above obligation is such, that if the above-bounden Thomas H. Coswell, Deputy Surveyor, shall well, truly, and faithfully, according to the laws of the United States, the printed Manual of Surveying Instructions, and other surveying instructions issued, or which may hereafter be issued, by the Commissioner of the General Land Office, and to such special instructions as he may receive from the Surveyor General in conformity therewith, make and execute the surveys which are required of him to be made by the foregoing contract, and return the true field notes of the said surveys to the Surveyor General in the 134 manner and within the period named in the said contract, then this obligation to be void; otherwise it shall remain in full force and virtue.

THOMAS H. CROSWELL, (L. S.)
DANIEL M. ROBBINS, (L. S.)
CHARLES A. MAGNUSON, (L. S.)

Signed, sealed, and acknowledged before us:

E. R. MOORE,
Residence: St. Paul, Minn.

OMISLEY SOULEE.
Residence: Minneapolis. 135

*Attach an adhesive seal after each signature and covering L. S.

Affidavits of Sureties.

State of Minnesota,
County of Ramsey—ss.

I, Daniel M. Robbins, one of the sureties on the official bond of Thomas H. Croswell, as U. S. Deputy Surveyor, do

depose and say that I am worth, in unincumbered property, not exempt from execution under the laws of the State of Minnesota, ten thousand dollars and upward, after payment of my just debts and liabilities, as follows:

Real estate, valued at $5000.00, and consisting of* 63-81 undivided interest in lots 68, 69, 70, 71 and 72, Hewitt's outlots (1st Div.) City of St. Paul, improved.

Personal estate valued at $5000.00 and consisting of! stock in Northwestern Elevator Co., of Minneapolis, Minn.

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Signature: DANIEL M. ROBBINS,
(Post-office address:) St. Paul, Minn.

Sworn to and subscribed before me this 10th day of December, 1896.

E. R. MOORE,
(Seal) Notary Public, Ramsey Co., Minn.

*Here state whether city property, improved or unimproved or improved farms or unimproved lands, and where situated.

!Here describe the nature of the property; whether bonds,
137 stocks, merchandise, etc.

Department of the Interior,
General Land Office,

St. Paul, Minn, January 4, 1897.
Office of U. S. Surveyor General.

I hereby certify that I have compared the hereunto attached Contract and Bond with the originals thereof on file in my office and that the attached is a true and correct copy of said originals.

P. H. KIRWAN,
138 U. S. Surveyor General for Minn.

State of Minnesota,
County of Ramsey—ss.

I, Charles A. Magnuson, one of the sureties on the official bond of Thomas H. Crosswell, as U. S. Deputy Surveyor, do depose and say that I am worth, in unincumbered property, not exempt from execution under the laws of the State of Minnesota, eleven thousand dollars and upward, after payment of my just debts and liabilities, as follows:

Real estate, valued at $6000,00, and consisting of* dwelling house and lots 7 and 8, block 9, Merriam Park, St. Paul.
Personal estate, valued at $5000.00, and consisting of stock in Northwestern Elevator Company, Bank of Merriam Park, Minnesota Transfer Land Company, National Historical Publishing Co.

Signature: CHARLES A. MAGNUSON,
(Postoffice address:) 1909 Rondo St., St. Paul, Minn.

Sworn to and subscribed before me this 10th day of December, 1896. 139

E. R. MOORE,
(Seal) Notary Public, Ramsey Co., Minn.

State of Minnesota,
County of Ramsey—ss.

I, Edward G. Rogers, Clerk of Dist. Court, do hereby certify that E. R. Moore, who administered the above oath, was, at the time of doing so, a Notary Public in and for said Ramsey County and State of Minn., duly qualified to act as such and that I believe his signature as above written is genuine. 140

In testimony whereof, I have hereunto set my hand and affixed the seal of the Dist. Court this 11th day of December, one thousand eight hundred and nine-six.

Seal of Clerk Dist. Court Ramsey County.

EDWARD G. ROGERS, Clerk,
By G. A. JOHNSON,
Dep. Clerk of Dist. Court,
Ramsey Co., Minn.

*Here state whether city property, improved or unimproved or improved farms or unimproved lands, and where situated.

!Here describe the nature of the property; whether bonds, stocks, merchandise, etc. 141

Certificate.

I, Patrick H. Kirwan, hereby certify that in my opinion the sureties to the above bond are sufficient, and I hereby approve the same.

PATRICK H. KIRWAN,
U. S. Surveyor General for Minnesota

1. The names of the U. S. Surveyor General, Deputy Surveyor, sureties, and witnesses must be written in full, and the residence of witnesses written after their signatures.

2. A full description of the surveys embraced in the contract must be written in the blank space left for that purpose.

3. The date when the surveys can be commenced shall not be earlier than the commencement of the fiscal year for
142 which the appropriation is made, except in cases where the appropriation is made immediately available.

4. The rates named in any contract must not exceed those fixed by law.

5. The signatures of the Surveyor General and of the Deputy Surveyor must each be witnessed by two persons.

6. All erasures must be dated the day it is signed by all the parties thereto, and its execution must be subsequent to the execution of the contract.

8. The names of all the parties executing the bond, and
143 of the witnesses thereto, must be written in full.

9. The affidavits of sureties must be made before some officer (preferably an officer of the United States) duly authorized to administer oaths and having a seal.

10. The sufficiency of sureties must be certified to by the U. S. Surveyor General.

11. The amount of the bond must be at least double the estimated amount that will be due to the Deputy Surveyor upon the completion of the contract made under the same.

144 12. The duplicate and triplicate contracts and bonds will be forwarded to the General Land Office, and when approved the Commissioner will forward the triplicate to the First Comptroller of the Treasury.

Contract and Bond. No. 73. Office of U. S. Surveyor General, St. Paul, Minnesota, Dec. 10, 1896. P. H. Kirwan, U. S. Surveyor General. Thomas H. Croswell, U. S. Deputy Surveyor. $400.00. Payable from the appropriation for the survey of public lands, act approved June 11, 1896. Approved December 18, 1896.

EXHIBIT "C."

W. A. L. Department of the Interior. E. M. R.
23—1047.

Washington, D. C., Oct. 29, 1896.

G. A. Burns, F. P. Duffy, Henry Weckey, P. J. Foley, Walter Douglas, William S. Douglas, Ephraim A. Trenholm, Petitioners.

vs.

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Simon J. Murphy, Geo. C. Robinson, Elisha H. Flinn, Temple E. Dorr, The Security Land and Exploration Company, The Cloquet Lumber Company, The Duluth & Iron Range R. R. Co., et al., Defendants.

The Honorable Commissioner,

General Land Office.

Sir: This case involves a quantity of land estimated to contain about 1202 acres in sections 2, 3, 4, 9, 10, 11 of township 57 north, range 17 west of the 4th P. M., Duluth Land District, Minnesota,—on and around the margin of Cedar Island Lake, or Ely Lake. 152

The petitioners claim that they are, and have been for a long time, bona fide settlers upon different portions of the said land and ask that the same be surveyed and platted, in order that they may have entry under the homestead laws.

On the other hand, the defendants claim that, under patents issued, and the swamp land grants made, by the Government, they have become, by mesne conveyances, owners of the following fractional subdivisions, delineated on the map filed in your office, to-wit:

153

Lots 1, 2, 3, 4, 5, 6 of section 2 containing 147.1 acres.
Lots 1 and 2 sec. 3, containing 74.75 acres.
Lots 1, 3, 5, 6, 7, 8 sec. 4, containing 224.37 acres.
Lots 1, 2, 3, 4 sec. 9 containing 148.10 acres.
Lots 1, 2, 3, 4 sec. 10 containing 139.26 acres.
Lots 1, 2, 3, sec. 11 containing 125.8 acres,

aggregating 859.38 acres, in the township aforesaid, forming a cordon of contiguous subdivisions, exterior to the lake aforesaid, and extending from its margin or water line, from one mile to a quarter of a mile at points.

And they claim, as the patentees of the land above described 859.38 acres, that they are entitled to (to) the 1202 acres lying between said subdivisions and the lake.

Jan. 28, 1895, a decision was rendered in this case (20 L. D. 28) ordering a hearing to be had to determine the facts involved in the controversy; and, on April 8th, 1895, a motion for review of that decision was denied (20 L. D. 295.)

The hearing took place before the U. S. Surveyor General in Minnesota, in June, 1895. A number of witnesses were
154 examined, and the deposition of Simon J. Murphy was taken and considered.

On June 21st, 1895, the Surveyor General transmitted a report upon the record, in which he finds:

"I am of the opinion and report, that the land between Lake Ely, as it actually exists, and the meander line of Cedar Island Lake, as noted in the field notes of Deputy Howe, and as platted upon the Government map, was actually in existence, as high, rolling, and heavily timbered lands, of good agricultural character, at the time of the pretended survey of Deputy Howe, in 1876. And I have
155 the honor to recommend that a survey of said lands be directed, as prayed for, in the petition for this proceeding, for, in my opinion, said land was Government land, in existence at the time of the pretended survey, which has never been surveyed by the Government."

On Oct. 31, 1895, your office decision affirmed the recommendation of the Surveyor General, and directed him to enter into a contract for the survey of the land in controversy. From which action the defendants appealed.

It is clearly shown by the record, that no portion of the interior of this township has ever been surveyed by a Government Surveyor.

156 The report of Deputy Howe in 1876, was absolutely and unqualifiedly false, and the courses and distances therein given, did not represent an actual survey, and had no stronger foundation in fact than his imagination. Consequently, the meander line of Cedar Island Lake was never actually run, and the 1202 acres of land that now exist, did then exist, between the meander line as established by him and the true meander line of said lake, and was never a portion of Cedar Island Lake, but was high land, rolling and heavily covered by timber.

The department has had some difficulty in arriving at the correct conclusion on the question as presented.

The hearing in this case went to two points, whether the physical facts, as alleged in the petition, actually existed on the ground, and second, to establish the fraud in the original survey and meander of Cedar Island Lake, as executed by Deputy Howe.

The plat made in pursuance of the survey made by Deputy Howe in 1876, was accepted and approved by the Government as the official plat of this township. All of 157
the lands of this township between December, 1879, and March, 1887, has been patented. Prior to the issuance of such patents, to-wit: in 1879, complaints were made to your office as to the correctness of the survey as made, and on June 11th, 1879, despite such complaints, an investigation was denied, and the plat approved.

On Jan. 18, 1895 (20 L. D. 28), this department rendered a decision in this case, overruling your office decision of Oct. 6, 1893, in which it was held in reference to the decision in the cases of Mitchell vs. Smale (140 U. S. 371) and Hardin vs. Jordan (Id. 401) that

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"the doctrine announced in these cases is not applicable to the one at bar, in that there is no case of riparian ownership here. There has been no recession of the waters of the lake, hence no accretions beyond the meander line. But it is insisted, that the land between the meander line and the shore line is not and never has been a lake bed. And by reason of the fraudulent survey, an area of about 1202 acres of land has been included in the lake, that is and was actually Government land and subject to homestead entry as such, at the time the official map is alleged to have been made. The ruling that attached accretions or relictions to the riparian title can not be applied in this case for the reason 159
that the meander lines were not run to and connected with the true shore line, and were so described as to leave a large area between these two points.

I am disposed to think this contention of counsel is sound. The showing here made is amply sufficient in my judgment to justify the belief that the survey made by Howe is a palpable fraud upon (upon) the Government; that there was no attempt to make the meander line conform to the shore

line; and that Government land does and did exist at the time the survey was made, reported and approved. Under these facts as they appear, I do not think the doctrine of Riparian Ownership is applicable to the question involved. * * *

While the exparte statements in themselves are not sufficient to warrant an order for a resurvey, yet they are deemed sufficient to require a hearing to determine whether the physical facts actually exist on the ground, and also to
160 establish the alleged fraud in the survey. This determination renders it unnecessary at this time to discuss any other questions suggested."

Motion for review of this decision having been filed in April 8, 1895, the Department denied the motion for review in which it was said (305 L. & R. 486) "Review of this decision is now asked by Murphy et al., who claim to own some of the abutting lots, and their contention is that the department is without jurisdiction in this matter, for the reason that the land has been patented. I deem it unnecessary to discuss this question at this time, at length, for the reason that all matters may be presented at the hearing, and
161 may be (fully) then fully considered in the light of all the facts."

It is only necessary to say that the Department does not seek to obtain jurisdiction over the patented lands. It is only those lands which it is alleged the Government was deprived of by the fraudulent survey, that can be affected by this hearing. The other question of riparian ownership, was for the purpose of the ordering of the hearing fully considered in the first instance under the showing made it was determined that this doctrine did not apply to the case at bar.

An opportunity, however, was, by the office, given to all
162 the parties to be heard, so that all the questions might be presented and considered in the final determination. It is unnecessary to argue at length as to whether this decision made the question of riparian proprietorship res judicata. The only questions submitted by the original decision for hearing was the question of facts as has been set up. The legal questions involved become res adjudicata by reason of the decision. Nor can it be said that anything contained in the decision on review changes this status, because the motion for review was denied. It is true that it was said that

"all questions might be presented and decided in the final determination." But clearly, what must have been meant, was all questions other than riparian proprietorship.

In other words, the questions of fact as to whether the survey was fraudulent, or as to the actual existence of this land between the meander line and the true shore line of the lake. It could not have been meant that the question of riparian ownership was left open, because in the very motion for review, it says:

"The other question of riparian proprietorship was, for 163
the purpose of ordering a hearing, fully considered, under the showing made, and it was determined that this doctrine did not apply to the case at bar."

The doctrine of res adjudicata is one considered by all judicial tribunals and the correctness or incorrectness of the ruling made in such a case will not be considered.

The decision of one executive officer is binding upon his successor, except upon grounds that would be sufficient for the ordering of a hearing (U. S. vs. Bank of Metropolis 15 Peters 377) Union Logging Company vs. Noble (147 U. S. 165) Stone vs. U. S. (2 Wall 525) Ex parte Michael Dermody 164
(11 L. D. 504).

The department will not therefore go into the discussion of riparian proprietorship. And it appears that counsel for defendants admit that the facts alleged as a basis for the original ordering of a hearing are in fact true.

The decision of your office appealed from is affirmed. Herewith I return the papers in the case.

Very respectfully

DAVID W. FRANCIS,
Secretary.

EXHIBIT "D." 165

Surveyor General's Office,
St. Paul, Minn., Dec. 10, 1896.

Thos. H. Croswell, Deputy Surveyor,
St. Paul, Minnesota.

Sir: In addition to printed instructions contained in Manual of Instructions to Surveyors General dated June 30, 1894, furnished you, the following special instructions

are issued for your guidance in the execution of surveys under your contract No. 73 of this date.

The execution of surveys specified in your contract will require:

1. The reestablishment of certain section, quarter section and meander corners on the north boundary of township No. 57, N., R. 17, W.

2. The temporary establishment of the corners of sec-
166 tions 1, 2, 11 and 12—sections 11, 12, 13 and 14—sections 10, 11, 14, and 15—sections 9, 10, 15, and 16—sections 8, 9, 16 and 17, and sections 4, 5, 8 and 9, and the quarter section corners between sections 9, 10 and (10 and) 11.

3. The establishment of permanent meander corners and the survey and permanent marking of the meander line of Cedar Island Lake as given in the original notes of Henry S. Howe, Deputy Surveyor, approved by the Surveyor General of Minnesota August 19, 1876, known and described as the "Old Meander Boundary," it being the boundary line between the patented land and the public land, to be surveyed as provided for under said contract.

167 4. The establishment of proper permanent meander corners at ordinary high water mark on the shore of Cedar Island Lake and the meandering of said shore line on the ground at ordinary high water mark.

5. The subdivision of all lands between the "Old Meander Boundary" and the ordinary high water mark of the lake.

You are directed in the first place to give early and earnest attention to the north boundary of the township, and if conditions not clearly provided for herein are found to exist, you are instructed to fully report the facts to this office for
168 further instructions.

The retracement of the North boundary will begin at the most easterly, fully identified, original corner west of Cedar Island Lake and proceed easterly. If the corner of sections 3, 4, 33 and 34 is found as represented on the diagram furnished you herewith some 20 chains north of the straight line joining the township corners, or its bearing trees not agreeing with original notes, and by measurement much too near the quarter corners between sections 33, and 34, or the corner of sections 33, 34, 27 and 28 of the township on

the north, such facts will indicate if not prove that said corner has been moved from its original position and may require its ~~obligation~~ and proper re-establishment in its original position. You will fully satisfy yourself in regard to proper identification and location of the section and meander corners west and east of the lake.

Several points are here given for your consideration:

First. The subdivision of the township having been found to be fictitious and consequently fraudulent, interior section corners are not to be restored to their original positions because they never had any existence as corners; they will be established according to the so-called original field notes. 169

Second. The "Old Meander Boundary," being fictitious and fraudulent, the tracts adjoining it partake of its character; therefore with the shape and size of lots outside of the "Old Meander Boundary," and preservation of their areas, this survey is not concerned; its purpose will be comprised and limited to the survey of land lying between the old boundary and the shore of Cedar Island Lake after said boundary has been properly established according to the original field notes. 170

Third. While the propriety of the restoration of interior section corners by measurement on meridional section lines is not questioned, it may be observed that inasmuch as all the notes are admitted to be fictitious they connot be depended upon in any one direction more than another; consequently section corners may be located on an east and west line and in this case with evident advantage. Measurements from the south boundary of the township will not be required.

You will, therefore, proceed to the eastern boundary of the Tp. and find or reestablish by proportionate measurements the corner of sections 7, 12, 13, and 18 on said boundary. Then run out the lines between sections 12 and 13, 11 and 14, 10 and 15, &c., according to the bearings and distances given in the original field notes and determine the most probable positions for the section corners to sections 11, 12, 13 and 14—sections 10, 11, 14 and 15—sections 9, 10, 15 and 16 and sections 8, 9, 16 and 17. Upon their proper location the position of other section corners and the greater part of the "Old Meander Boundary" will depend. 171

The attached memorandum for the adjustment and re-establishment of meander and boundary lines furnished by the Commissioner of the General Land Office is given for your instruction and guidance in determining the location of the several section and quarter section corners hereinbefore mentioned and the establishment of the "Old Meander Boundary." The method is given in detail, is clear and plain to be understood and must be carefully studied and closely followed.

172 You will be authorized to charge for the establishment of the "Old Meander Boundary" as follows:

When the survey of the said boundary requires you to pass over the lines three times the trial or random line will be run as usual without compensation; but a charge at the mileage rates specified in your contract may be made for the establishment and construction of the corners; again at the same rate for running out the true line, marking and blazing the same, and clearing out the underbrush; this amounts to a charge for twice the length of the line run at the specified rates when conditions justify such compensation.

173 The corners on said boundary on section lines will be constructed like regular "Meander Corners" and marked with the letters "O. M. B." (for Old Meander Boundary), on the side facing away from the lake; P. L. (for Public Land), on the side facing the lake; and proper section numbers on the other sides; for example, on the line between sections 10 and 11, the corner will be marked:

"O. M. B. on S.
~~P. L. on N.~~
S. 11 on E., and
S. 10 on W. faces."

174 (See "Meander Corners," par. 5, page 43 Manual of 1894; substitute in description "Old Meander Corner" on "Meander Corner.")

The stations along the "Old Meander Boundary" will be perpetuated by "post with bearing trees," corners, or a proper substitute, with dimensions conforming to quarter section corners (See Manual of 1894, page 40 and 41), and having the pits (if dug) on the boundary line. The posts will be set squarely on line as nearly as practicable and marked "O. M. B." on side facing away from the lake; P. L. on side facing lake; and on nearest side, when following

boundary in order of survey No. 1, No. 2, No. 3 in a separate and continuous series in each section; on the farthest side the appropriate section number.

Herewith you are furnished a diagram of the Northern part of Tp. 57, N. R. 17, W. showing the meander line of Cedar Island Lake as given in the field notes of Henry S. Howe, Deputy Surveyor, also the approximate location of the shore of said lake as it is reported to exist on the ground. The North boundary of the township shown by black line is according to notes returned by Deputy Howe. The red line drawn on the diagram indicates the irregularities reported to exist in the said line. 175

You are also furnished with the field notes of the meanders of Cedar Island Lake as given by Henry S. Howe, Deputy Surveyor; also the description of all corners of the Tp. lines and sections in the northern part of the Tp. as given in the field notes of the original survey.

Your surveys must be executed with a solar compass or transit working independently of the magnetic needle.

In order that accounts for high rates may be properly rendered your field notes must show the exact chainage at which you enter and leave land "heavily timbered, mountainous, or covered with dense undergrowth." 176

You will note all improvements of settlers on the land to be surveyed by you in the execution of your surveys and state the location and approximate value of their improvements.

P. H. KIRWAN,
Surveyor General.

MEMORANDA.

Adjustment and Re-establishment of Meander and Boundary Lines. 177

Surveying Division, December 3, 1896.

Meander and boundary lines, made up of two or more courses, may be established or re-established from the original field notes thereof, in the most probable original positions, as follows:

1. Write down the original bearings and distances in tabular form, then enter the difference of latitude and the departure of each course in the proper places. These rules

are formulated for running out the line in the order given in the notes.

2. On the ground first determine a true meridian; then beginning at the initial corner, carefully run out the meander or boundary line with the bearing and distances given in the original field notes, making at each change of direction temporary trial stations, so called. The station at the end of the last course, which will be extended to its full length regardless of the position of the objective corner, will
178 be the terminal station.

3. Next at the "terminal station" take the bearing and distances to the objective meander or boundary corner, as the case may be; this last will be the closing errors, which must not be confounded with the falling. The latter is the closing error reversed.

4. Enter the closing error in the table under the last course already tabulated, placing the distance under the bearing. Then add up the differences of latitude, departure, and the column of distances.

5. From each trial station run a line parallel to the
179 "closing errors" and in the same direction; make said line, called a correction offset equal to a part of the closing error proportioned to the distance of the trial station from the initial corner. At the point thus determined permanent corners will be established and properly witnessed and marked.

6. To correct the co-ordinates of the several courses distribute the difference of latitude and the departure of the "closing error," assigning to each co-ordinate a correction proporioned to the length of the course. Enter the corrected values in "Part 2" of the table immediately below
180 "Part 1."

7. Now by reference to the diagram and tables the closed survey made by the surveyor will be clearly understood. Beginning at the initial corner the survey follows the adjusted courses to the objective corner; thence with the "closing error" reversed, and the original course reversed and taken in inverse order back to the initial corner, the point of beginning.

8. Next write in "Part 2" the reversed courses referred to in the last clause of the preceding paragraph; then add

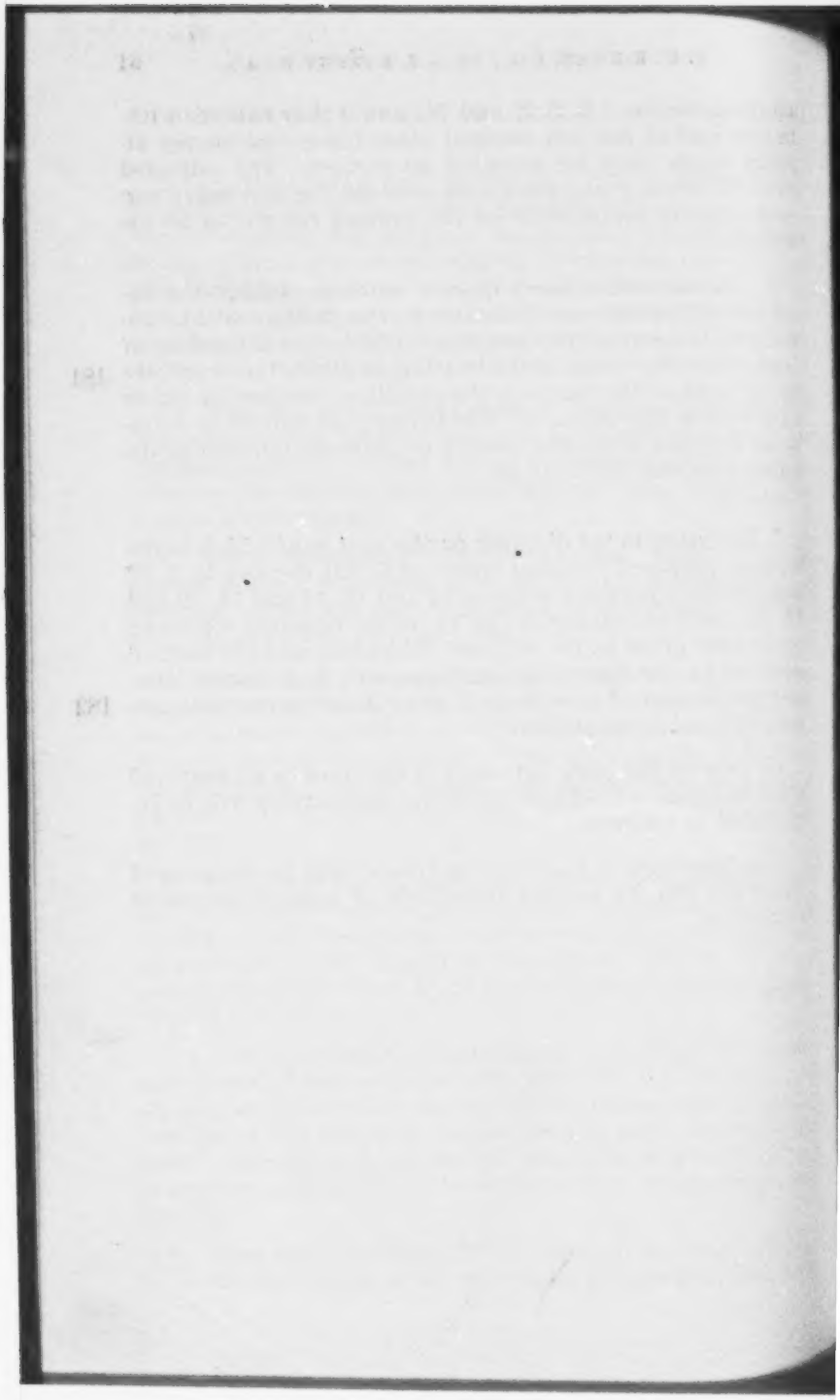
up the columns: N. S. E. and W., and if they balance within one unit of the last decimal place the closed survey already made may be accepted as correct. The adjusted courses (bearing and distances) between the successive corners already established on the ground remain to be determined.

9. To determine the adjusted courses: Divide the departure by the difference of latitude; the quotient will be the natural tangent of the bearing. Divide the difference of latitude by the cosine of the bearing, or divide the departure 181
by the sine of the bearing; the resulting quotient in either case will be the distance. The better plan will be to determine distance from the greater co-ordinate latitude or departure as the case may be.
Example.

Referring to the diagram on the next page which represents a supposed "closing error" of S. 52½ degrees E. 7. 32 chs., the line between sections 12 and 13, 11 and 14, 10 and 15, &c., will be run across the Tp. to the terminal corner on the course given in the original field notes and the method detailed in the foregoing directions will be followed literally to the end of paragraph 5, page 2, but permanent cor- 182
ners will not be established.

In view of the close approach of the lines to an east and west direction a modification of the instructions will be introduced as follows:

The departure of the "closing errors" will be distributed along the line by placing two-thirds of same at corner of sections 8,



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FOLD OUT IS TOO LARGE TO BE FILMED

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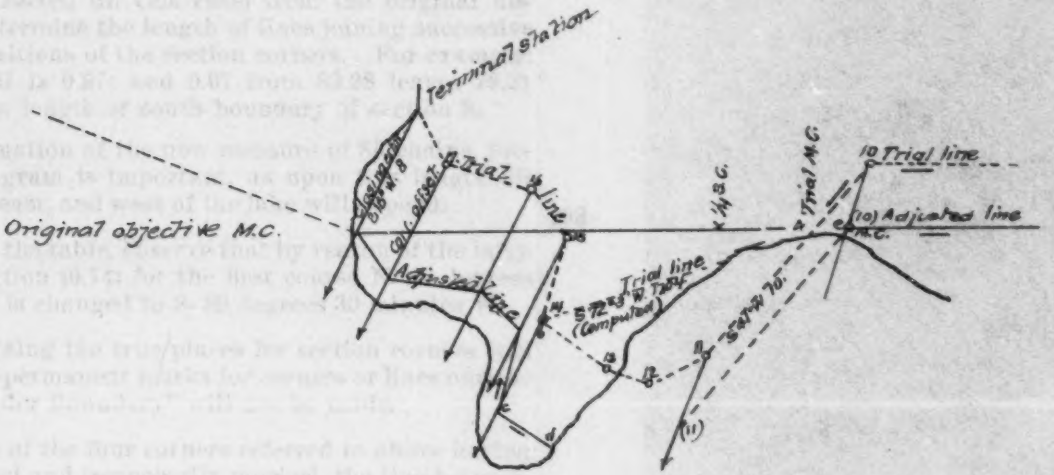


Original Courses			Difference Latitude		Departure	
No	Bearing	Dist.	N.	S.	E.	W.
11	S 41° W.	10		7.55		6.56
12	S 66½° W.	3.60		1.43		3.30
13	N 75° W.	2.50	0.65			2.41
14	N 52° W.	5.00	3.08			3.94
			3.73	8.98		16.21
				3.73		
				5.25 S.		

dep or 1.621 log. 12.098 1.2098
diff lat. 5.25 log. 0.7202 0.7202
72°3' log tan. 0.4896 Cos 9.4888 Sin. 9.9783
Dist. 17.04 log. 1.2314 1.2315

"a" — "b" course S 72°3' W. 17.04 chains.

9, 16 and 17; one-half at corners of sections 9, 10 15 and 16, and so on easterly. The difference between the successive eastings substracted (in this case) from the original distances, will determine the length of lines joining successive established positions of the section corners. For example: 3.88 minus 2.91 is 0.97; and 0.97 from 80.28 leaves 79.31 chains, the new length of south boundary of section 9.

The determination of the new measure of 80 chains, proportion on diagram is important, as upon this length all corners south, east, and west of the lake will depend. 193

Referring to the table, observe that by reason of the large latitude correction (0.74) for the first course N. 89 degrees 49 minutes W. is changed to S. 89 degrees 30 minutes W.

The lines joining the true places for section corners will not be run and permanent marks for corners or lines outside the "Old Meander Boundary" will not be made.

The position of the four corners referred to above having been determined and temporarily marked, the line between section 11 and 12 will be run north a distance equal to the new measure for 80 chains already found and a temporary section corner set. The quarter section corners will not be 194 required.

From the section last mentioned run west and at distance given by original notes proportioned as stated above, set corner on "Old Meander Boundary;" continue to lake and at high water mark, set meander corner as required by Manual of 1894.

From the corner of sections 1, 2, 11, and 12, run northwesterly by original notes and correct back; set the quarter section corner at 40 chains by proportionate measurement, but independent of the length of 80 chains already determined. 195

In a similar manner establish meander corner at all section lines intersecting the "Old Meander Boundary" south and west of the lake; and on the lake shore, at ordinary high water mark, establish regular meander corners. All measurements of this work will be made proportionate to the new measure of 80 chains as herein described.

The west boundary of section 4 will be surveyed by the method employed on the east boundary of section 2.

The line between sections 3 and 4 will be run on the course given in the original notes and the corner at intersection with "Old Meander Boundary" will be placed at 26.10 chains by proportionate measurement from the corner of section 3, 4, 33, and 34 on the north boundary. In case the conditions are found to be as represented on the diagram with letter of Nov. 7, 1895, the 26.10 chains will be increased to over 30 chains actual measurement.

Establishment of the Old Meander Boundary.

196 The following diagram and table, with the foregoing rules, paragraph- 1 to 9 inclusive, will guide the deputy in the execution of the work without further instruction.

Continuation of Memorandum.

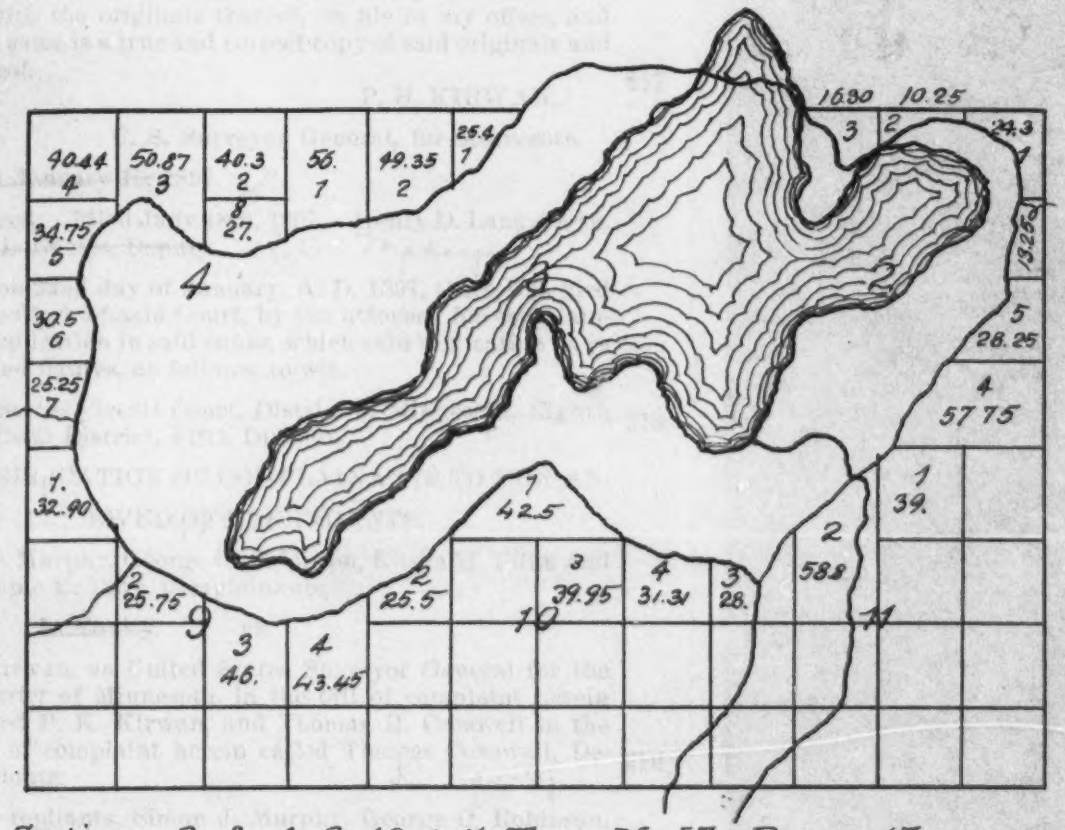
"10. The permanent corners having been established and marked (see paragraph 5), and the adjusted courses correctly computed (paragraph 9), the surveyor will begin at the initial corner and run out said adjusted courses between the successive permanent corners already established, and properly blaze and mark the line."

Conditions may exist in section 2, which, without additional instructions, may give the deputy some trouble.

205 Suppose for example that the trial line on the 11th course passes into the lake. The deputy will run as far as he can, here supposed to be 5 chains, to the shore on said course. Then take the remainder of the course S. 41 degrees W. 10 chains and a sufficient number of the following courses to reach a point "b" which can be attained on a straight line from "a." Take out the latitude and departure for such courses and compute the bearing and length of "a b." This line will be substituted for the tabulated courses (see table), and will be used as part of the original field notes, and positions of adjusted corners will be determined as already directed.

206 Should the adjusted position of "10" fall short of the shore, run as much of the adjusted course (10) to (11) as possible and set a regular meander corner at "e," In case a fractional course, 13 to 14, results further on, run said adjusted course by reversed bearing from "e" to "d," and at the latter point establish a regular meander corner.

Exhibit B



Sections 2. 3. 4. 9 10 & 11 Town No. 57. Range 17.
St Louis County, Minnesota.

Exhibit B

Department of the Interior, General Land Office,

Office of U. S. Surveyor General,

St. Paul, Minn., January 4, 1897.

I, hereby certify that the foregoing and attached, special instructions for executions of the survey under contract No. 73, with the hereunto attached memoranda, have been compared with the originals thereof, on file in my office, and that the same is a true and correct copy of said originals and all thereof. 217

P. H. KIRWAN,

U. S. Surveyor General, for Minnesota.

~~Dated January 15, 1897.~~

Indorsed: Filed Jany ~~18th~~, 1897. Henry D. Lang, Clerk. By ~~L. Davies, Deputy~~. R. C. Mabey

That on 22nd day of January, A. D. 1897, there was filed with the Clerk of said Court, by the attorney for complainants a replication in said cause, which said replication is, in words and figures, as follows, to-wit:

United States Circuit Court, District of Minnesota, Eighth Judicial District, Fifth Division. 218

THE REPLICATION OF COMPLAINANTS TO THE ANSWED OF DEFENDANTS.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, Complainants,

~~In Equity~~. vs.

P. H. Kirwan, as United States Surveyor General for the District of Minnesota, in the bill of complaint herein called P. K. Kirwan, and Thomas H. Croswell in the bill of complaint herein called Thomas Coaswell, Defendants. In Equity 219

These repliants, Simon J. Murphy, George O. Robinson, Elisha H. Flinn, Temple E. Dorr, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith that they do and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the

said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in law, to be replied unto by these repliants; without this, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

220 Dated January 22d, 1897.

M. H. M. STANFORD,
Solicitor for Complainants.

Indorsed: Filed Jany. 22nd, 1897. Henry D. Lang, Clerk.

By L. Davies, Deputy.

United States of America.

United States Circuit Court, District of Minnesota, Eighth Judicial District, Fifth Division.

NOTICE OF MOTION.

221 Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple D. Dorr, Complainants,

~~In Equity.~~ vs.

P. K. Kiwan, as United States Surveyor General for the District of Minnesota, and Thomas Caswell, Defendants. In Equity

To P. K. Kirwan, United States Surveyor General for the State of Minnesota, and Thomas Caswell:

Please take notice that the above entitled complainants will move said Court at the Chambers of the in the Federal Building in the City of
222 Minneapolis in said district on Thursday the seventh day of January, A. D. 1897, at ten o'clock in the forenoon on (on) said day, or as soon thereafter as counsel can be heard that a temporary injunction issue restraining you, the said defendant, P. K. Kirwan, as Surveyor General or otherwise, during the pendency of the above entitled action and until the final determination thereof from entering into any contract, or perfecting a contract partially entered into for a survey of the lands hereinafter described, or any part of parcel thereof, or from surveying the same yourself,

or causing the same to be surveyed in any manner, and restraining you, the said Thomas Caswell, defendant, from surveying said land or any part thereof, or causing the same to be surveyed. Said lands are situated in the County of St. Louis, State of Minnesota, and described as follows, to-wit:

Sections one (1), two (2), three (3), four (4), five (5), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16), township fifty-seven (57), north of range seventeen (17) west, restraining 223
yourself, your agents, attorneys or servants from making such survey.

That said motion will be based on the order to show cause and the affidavit of M. H. Standford and Merritt S. Cook, and the bill of complaint in this action, copies of which are hereunto attached and upon the records and files in this action.

That the grounds of this motion are particularly set forth in said affidavit and the said bill of complaint, which are hereby referred to and made part of this notice.

Dated 21 day of Dec., 1896. 224

M. H. STANFORD,
Solicitor for Complainants.
600-601 Torrey bldg., Duluth, Minn.

United States of America.

United States District Court, District of Minnesota, Eighth Judicial District, Fifth Division. In Equity

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, Complainants,

~~In Equity~~. vs.

P. H. Kirwan, as United States Surveyor General for the 225
District of Minnesota, and Thomas Caswell, Defendants.

State of Minnesota,
County of St. Louis—ss.

Mortimer H. Standford being duly sworn, deposes and says that he is the solicitor for the above named complainants and is familiar with and has knowledge of the facts contained in the bill of complaint in this action; that said complainants are all residents of the State of Michigan, said

Dorr residing in the City of Saginaw and the remainder thereof residing in the City of Detroit in said State of Michigan, and all of said complainants are now absent from the State of Minnesota. That deponent fears that said P. K. Kirwan, Surveyor General, will let a contract or perfect the same if already let, for the survey of the lands described in the bill of complaint herein, and that the said defendant Caswell will perfect a contract for such survey with said surveyor General, if the same is not already perfected, and proceed to survey said lands, and that said complainants will
226 thereby be irreparably injured, as set out in the bill of complaint herein, before a motion can be made or heard in this action, unless restrained by the temporary order of this Court, and he also fears that said complainants may be so irreparably injured by the letting or perfecting of such contract and by such survey, should he be obliged to send the bill of complaint and other papers in this action to the State of Michigan to be verified by said complainant or one of them.

Deponent further says, that annexed hereto and made a part thereof, is a true copy of the deposition of Simon J. Murphy, one of the said complainants and of the whole there-
227 of, taken on interrogatories and cross interrogatories and used as evidence before the Surveyor General of the United States for Minnesota, in a proceeding before said Surveyor General, on a petition for a re-survey of said lands during the month of July, 1895, and that the same is now of record in the office of said Surveyor General or of the Interior Department of the United States.

That annexed hereto and made a part hereof is also the true copy of the deposition of Elisha H. Flinn and of the whole thereof one of said complainants, taken before said Surveyor General at said hearing and that the same was corrected, read and signed by said Flinn in the presence of
228 deponent and said Surveyor General and other parties interested, and is now of record in like manner as the testimony of said Murphy.

M. H. STANFORD,

Sworn and subscribed to before me this 21st day of Dec., A. D. 1896.

(Notarial Seal)

OSCAR MITCHELL,
Notary Public for ~~St. Louis Co.~~ Minnesota

United States of America.

United States Circuit Court, District of Minnesota, Eighth Judicial District, Fifth Division.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn, and Temple E. Dorr, Complainants,

~~In Equity~~. vs.

P. K. Kirwan as United States Surveyor General for the District of Minnesota, and Thomas Coaswell, Defendants. In Equity 229

State of Minnesota,
County of St. Louis—ss.

Merritt S. Cook, being first duly sworn deposes and says that he is a resident of Duluth and a citizen of said county; that he is Deputy United States Surveyor and has been such for three years last (passed), and by profession a civil engineer and land surveyor and has followed said profession for thirty years last (passed). That he is familiar with government surveys and the subdivisions of lands; that he has had a large experience in fixing riparian boundaries in case of original defective surveys and in establishing corners 230
where, by the original survey, no corners could be found, and in case of defective surveys and defective field notes. That he has had large experience in fixing disputed lines in case of riparian boundaries. That he is familiar with the lands lying around Cedar Island Lake in township fifty-seven (57), north range seventeen (17) west, St. Louis County, Minnesota, and with the two northern (tiers) of sections of said lands mentioned in said township. That he has examined (that he has examined) carefully the original field notes of all other surveys made in the northern part of said township and the land bordering on the waters of Cedar Island Lake. That he has located the following corners in said township northeast corner of section sixteen 231
(16) northeast corner of section eight (8), and the north quarter post of section sixteen. That said corners are the important corners for the location of said Cedar Island Lake and of the meandered line as shown by the original field notes of the government survey. That Exhibit "D" annexed to the original bill of complaint in this action was made by deponent from the location of the corners as aforesaid, and from an examination of the field notes of the original government survey, from actual measurements by de-

ponent in making survey for county road in said township and from the testimony of civil engineer F. L. Dever who was sworn as a witness on the hearing before the Surveyor General during the summer of 1895, at Duluth, Minnesota, in a proceeding for an order to re-survey the lands about said Cedar Island Lake. That in said testimony the civil engineer swore that in establishing northeast corner of section sixteen in said township he measured one mile for each section going from south to north. That deponent also made such plat correspond with the corners located
232 by the county surveyor W. B. Patton, according to the field notes of the original survey and the meander line. That he surveyed all the important points necessary to locate all that portion of Cedar Island Lake lying in section nine (9) and ten (10) on said Exhibit "D" by triangulation and also located that part of St. Mary's Lake lying on said section nine (9) in connection with the county road survey.

Deponent further says that in his judgment based on actual experience in the field and elsewhere the cost of making a re-survey of any portion of said township about Cedar Island Lake will be very large and that such re-survey to be
233 of any value must be attached to the outside monuments of said township and surrounding monuments to be established. For that purpose a line must be run around the entire township and eight interior corners in said township must be established. To do this six subdivision lines across the town must be run. This would be an addition of sixty miles of straight work without including the offsets or the necessary work in order to attach the lines to establish corners.

Deponent further says that there are no interior corners established by the government in said township except that of northwest corner of section thirty-six, that the original
234 field notes of the meander line of said lake being about seven and one-half miles long must be run twice, first, the random line, second, the true course in order to correspond with the fixed monuments varying in course from one section to another from two to twelve degrees. This would take seventeen miles of line. The actual lake must be run which would be about six miles additional and in addition thereto tying each to the adjacent corners. It would also be necessary to run in order to establish monuments on the lake at least three section lines after the corners are

once established making in all about one hundred miles of careful survey.

Deponent further says, that the original methods of government survey would be of no use or benefit to any one for locating the property about the lake; even a survey with a soler compass would not be sufficiently accurate. That a clear transit line through the heavy timber and measurements taken with steel tape and plumb-bobs must be made throughout the entire one hundred miles of lines. Even measurements and random air lines across the town do not 235
furnish a basis for proportional measurements, inasmuch as the corners themselves must be located by measurements on section lines which necessarily have to be measured and computed in accordance with law. That in order to make a survey which would be of any value a large amount of valuable timber about Cedar Island Lake and in other portions of the town must necessarily be cut down in running lines.

To survey these lines one hundred miles in length a line must be cut to a necessary average width of four feet. (Thus) would equal an area of fifty acres of land, then estimating even as low as.....feet of good timber per acre would amount to..... feet of valuable timber necessarily de- 236
stroyed.

General Observations.

Granting the technical right of the government to the territory between the water lots, as shown on the government township plat, and the actual water line, the title would be perfectly valueless unless its boundaries can be defined. So that the whole question resolves itself into the practicability or possibility of locating the meander line. A mere survey of the same according to the meander notes of original survey would be no nearer the true location than a map of the same made on an ordinary square plat. Again, if the interior corners of the township were, or had been lo- 237
cated, as represented on the field notes, the difficulty in the case would be very much less, as the work would be done for about one-third of the probable cost that is now necessary. Regarding the fraudulent survey of the town it is well to remember that its nature should have been ascertained previous to filing the township plat and if the government chooses to take advantage of its own errors as to this particular lake would it reimburse the value of the multitude of large lakes known to exist in the township which were

not shown on original plat, but were sold as land. And even for the lake in question how could it make a new plat showing for instances lot two section thirty-five township fifty-eight (58) north range seventeen (17) west as having about six acres instead of the area shown on township plat or lot two section nine southwest corner of lake as having less land than was named in the patent. Again it would be well to note that Mr. Howe in his pretended survey of Cedar Island Lake did with one exception what has been customary in all such cases at least for all interior
238 lakes, to-wit, merely to establish meander posts (which unhappily he failed to do), then take a course right and left so as to give a general idea of the shape of the lake, then make meander notes of the same in the office. So that in nine cases out of ten or nine hundred and ninety-nine in a thousand (perhaps nearer the truth) the actual line is never run on the shore of the lake, and the meander line itself in a majority of cases becomes a mere technicality, sometimes a thousand feet from the shore inland or in the water as the haphazard notes indicate, but as a general rule the notes will prove by closing on the meander corners.

On account of the great irregularity of the north line of
239 the township the north tier of sections are proportionately out of shape and in order to survey the given meander line even after the adjacent corners have been established each section would require a different meridian and a new proportionate variation in length of various courses.

That deponent is familiar with the various surveys in the township and those made after the original government survey were as follows: Soon after the township plat was filed various parties, among the rest the Nelson Lumber Company made partial surveys and explorations presumably in search of pine timber. The corner A B C on accompanying map representing such corners but no official sur-
240 vey of the township was ever attempted until the winter of '93 and '94 when the county commissioners in response to a petition signed by various parties representing mining interests on sections five and six representing that no interior corners were to be found, that they were unable to resurvey the whole township in order to establish the corners required for their sections ordered the county surveyor William B. Patton to make such survey in accordance with law. Accordingly, such work as necessary for the purpose named was done but only two interior section corners were estab-

lished. The notes of such survey including notes of the four lines surrounding the township and three interior random lines were turned over to the present county surveyor F. Davis who i nresponse to wishes of some settlers on disputed territory northwesterly from said Cedar Island Lake made a survey and partial sub-division of section four and north half of section nine, as shown on within map. In addition to making the official county survey Mr. Patton made a careful subdivision of sections five and six and established interior monuments for the same and at least one village (Fayal) has been laid out in accordance with such 241
survey.

At present there are at least three monuments about forty or fifty rods from each other each purporting to be the correct location for the corner 4 5 8 and 9. If a new set of corners were to be established as a necessary result of the proposed resurvey of the lake it would cause further confusion in monuments and boundaries and the establishment of other corners unless accompanied by the very best evidence as to accuracy and legality and especially if not done by a method superior in accuracy to that adopted in the Patton survey would have little effect as to settlement of boundaries and would necessarily cause much confusion 242
and expensive litigation. If the deputy surveyor should be allowed to use the county surveyor's notes for outside lines of the township founding his work on the same so much work might be saved.

Yet we would have the anomalous condition presented of making an official survey authorized by the United States Government made to conform to that of another surveyor made in accordance with state law although authorized by the county.

Expense of Re-survey.

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The expense of re-survey of the town and lake would be at least six times what any surveyor could afford to subdivide an ordinary township for according to usual method adopted.

The total expense of an accurate survey which would be conclusive as to legality could not be in my opinion (be) less than three thousand dollars ($3,000).

Patton's survey for the county, forty-two miles of line was

paid, I am informed, one thousand for his work exclusive of expense of subdividing sections five and six.

MERRITT S. COOK,
Dep. U. S. Surveyor.

Sworn and subscribed to before me this 19th day of Dec., 1896.

(Notarial Seal) M. H. STANFORD,
Notary Public, for St. Louis County, Minn.

244 Deposition of Elisha H. Flinn.

E. H. Flinn being first duly sworn testifies as follows:

A. Where do you reside? A. In Detroit, Mich.

Q. How long have you lived there? A. Thirty years.

Q. State if you were one of the owners of the land which is in controversy?

Objected to as calling for a conclusion, and as incompetent.

A. Yes, sir.

Q. What knowledge have you of land about Ely Lake in township 57-17 in this county, Mr. Flinn? A. I have no
245 personal knowledge, never was in the township until day before yesterday, was in section 5.

Q. State what you had to do, if anything, with negotiations of purchasing this land for S. J. Murphy of Detroit? A. I attended the details of the purchase.

Q. State what was the basis of such purchase?

A. We purchased those lands. You want me to give the different purchases for different individuals? We purchased those lands for the pine timber and also for the lake frontage, we having a large amount of timber just north in township (fifty) 58-17, and at that time considered that as the only outlet for the timber. The purchase of the land in section 11, 57-17, was largely for the outlet, as we sup-
246 posed of the lake. Also the timber on land in the western part of the lake in 9 was purchased to control that portion in case we should dam the lake as a reservoir. We had no knowledge whatever of any fraud or anything of that kind in connection with this survey.

Q. How about what you supposed to be the outlet of the lake? A. Supposed it was on section 11.

Q. You secured that to control the outlet? A. Largely for that purpose, there was some timber on it too.

Q. Wouldn't have bought it except for that? A. No,

Q. How about that in section 9 covered by the waters of St. Marie's Lake? A. This is the first I knew of it when I saw the plat here, that our land on section 9 was mostly under the waters of St. Marie's Lake.

Q. Supposed all that time it was timber land? A. Yes.

Mr. Van Derlip:

Q. The government plat that you speak of Exhibit "A" is a certified copy, isn't it? A. It looks just exactly like it.

(Signed) ELISHA H. FLINN.

(Q.) Counsel for petitioners moves to strike out the entire testimony of this witness as incompetent and irrelevant, and having nothing to do with the two questions submitted to the Surveyor General for his determination. 247

Mr. Van Derlip: We offer in evidence the certified copy of the field notes of the survey of the interior and subdivision lines of township 57 N. of range 17 west of the 4th P. M. St. Louis County, Minn., survey of Henry S. Howe, deputy surveyor under his contract of April 26, 1876.

State of Minnesota.

In the matter of the petition of G. A. Burns et al. for the resurvey of sections 2, 3, 4, 9, 10, 11 in township 57, N. R. 17 W, 4th Principal Meridian of Minnesota. 248

Before the United States Surveyor General, at the St. Louis Hotel, in the City of Duluth, Minnesota, on the 11th day of June, A. D. 1895.

Interrogations to be propounded to Simon J. Murphy of Detroit, Michigan, on the following interrogations:

First Interrogatory: What is your name, age and occupation and where do you reside?

2nd Interrogatory: State what interest you have, if any, in any portion of the following described lands, situated in St. Louis County, State of Minnesota, viz.: Sections 2, 3, 4, 9, 10 and 11, township 57 N. R. 17 W. 4th principal meridian of Minnesota, and state the particular description thereof in which you have or claim an interest, if any. 249

3rd Interrogatory: If you state you have, or claim to have an interest in such lands, state when, and of whom, you purchased same, and the land and interest originally purchased by you, and where you resided at the time you made such purchase.

4th Interrogatory: If you say in answer to preceding interrogatories that you purchased any portion of such land, state what you supposed to be the true boundaries of such piece of land so purchased by you, at the time you made such purchase.

5th Interrogatory: At the time you made such purchase what evidence of the boundaries of each of such descriptions so purchased by you, did you examine?

6th Interrogatory: What did you rely upon (at) the evidence of the true boundaries of such land at the time you
250 made such purchase?

7th Interrogatory: What was the basis of the purchase price of each piece of said land so purchased and paid for by you?

8th Interrogatory: When did you first hear of an alleged fraud in connection with the original government survey of this land?

9th Interrogatory: Before or at the time you closed the purchase of said land, had you heard of any fraud or rumors of fraud connected with the original government survey of said land?

The following are answers under oath of Simon J. Murphy
251 to the interrogatories hereunto annexed:

1. A. Simon J. Murphy. Aged eighty years. Occupation has always been that of a lumberman. Reside at Detroit, Michigan.

2. A. I own an undivided one-half interest in lots 1, 2, 3, of section 2; lots 1, 2, of section 3; lots 1, 8, of section 4; lots 1, 2, 3, 4 in section 9; lots 1, 2, 3, 4 of section 10; lot 3 of section 11; town 57 north, range 17 west; lot 2 of section 35; and lot 1, 2 of section 34; town 58 north, range 17 west, St. Louis County in the State of Minnesota.

3. A. On or about the 11th day of April, 1883, I purchased the entire title from Philip M. and Edmond D. Graff
252 and Daniel E. Little to lots 2, 3, 4 of section 1; lots 1, 2 of section 3; lots 1, 8 of section 4; lot 4 of section 9; lots 1, 2 of section 10, in town 57 north, range 17 west, together with lot 1 of section 34, and lot 2 of section 35, town 58 north, range 17 west. This purchase from Graff and Little included about 4,000 acres tributary to Ely Lake in towns 57 and 58 north, range 17 west.

4. A. On or about February 16th, 1884, I purchased of Morris Thomas of Duluth, Minnesota, lots 1, 2, 3 of section 2, besides 80 acres on section 9 in same town. On or about

1884 of the Nelson Lumber Company of Cloquet, Minnesota, lots 3, 4, of section 10; lot 3 and NW ¼ of SW ¼ of section 11; town 57 north, range 17 west, and lot 2 of section 34, town 58 north, (range) 17 west, besides about six hundred acres in sections 13, 14 and 34, town 58 north, range 17 west. On the 5th day of April, 1883, I purchased of Scot Griswold or Kent County, Michigan, lots 1, 2, 3 of section 9, and one hundred and sixty acres in sections 8 and 9, town 57 north range 17 west, in same county. I also purchased about that time and since then other considerable tracts of pine timber in other parts of St. Louis County and Minnesota, for the us- 253
ual purpose of lumbering.

I purchased these lands for their pine timber, and originally took the title in my own name, intending to lumber the timber in the two towns above described, into Ely Lake, in the usual manner of lumbering by water. At that time there were no railroads contemplated in that locality, and I bought the lands around Ely Lake to facilitate the lumbering operations of this surrounding tract of pine timber, in the usual course of business, without any knowledge of any special excess in any of the descriptions. Since the time of this purchase I have deeded an undivided one-sixth interest in and to these lands to George O. Robinson, of Detroit, 254
Mich., and an undivided one-sixth interest to Temple E. Dorr, of Saginaw, Mich., a former partner of mine in the lumber business, and have contracted to sell an undivided one-sixth interest to Elisha H. Flinn of Detroit, Mich. At that time I resided at the City of Detroit, Mich., where I have resided for the last twenty-five years.

5. A. When I purchased these lands around Ely Lake I relied upon the plats and government descriptions that they were bounded by the lake. I bought and paid for the timber, which was estimated up to the lake shore, at the rate of about $1.65 per thousand feet at that time, which estimate included all of the timber up to the shore of the lake. The patents to all of the above described lands have 255
been duly issued and delivered and are now in my possession, and my chain of title from the government I consider complete.

6. A. I took the report and examination of my woodsmen, relying on the government plat that the lands were bounded by the lake. I made no examination of the lands personally.

7. A. Upon the government descriptions and boundaries and upon the plats which I examined.

8. A. The object and basis of said purchase of the lands bordering on Ely Lake was their value for the timber which stood upon them and the riparian rights which said lands bordering on Ely Lake possessed for the purpose of flooding said lake for a reservoir and holding ground in case of fire, and banking ground for the lumbering of said timber. At that time no railroads had been contemplated in that locality, and I expected that this timber would be brought out through the streams and I relied upon this lake with which to lumber all this timber in that vicinity, comprising
256 in all about 5,600 acres and containing an estimate of upwards of 60 million feet of pine timber.

9. A. Do not know that I have ever heard that there was any fraud, I have heard indirectly, long after I had made the purchase, that the survey of the lake was not very complete, but to what extent have never known. I heard such rumor about them years ago.

10. A. No.

11. A. Nothing.

(Signed) SIMON J. MURPHY.

Before the United States Surveyor General, at the St.
257 Louis Hotel, in the City of Duluth, Minnesota, on the 11th day of June, A. D. 1895.

In the matter of the petition of G. A. Burns et al. for the survey of sections 2, 3, 4, 9, 10, 11 in township 57, N. R 17 W. 4th Principal Meridian of Minnesota.

Cross-Interrogatories to be propounded to Simon J. Murphy, of Detroit, Mich.

1st Cross-Interrogatory: Did you know the quantity of land in each government lot or subdivision purchased by you as shown by the government survey; if you answer yes, state what was the area of each tract of land bought by you
258 in sections 2, 3, 4, 9, 10 and 11 in township 57 north of range 17 west in St. Louis county, Minn.

2nd Cross-Interrogatory: Where were you at the time of the purchase of said land; and, if you answer that you were not upon the land itself, state who negotiated the purchase in your own behalf?

3rd Cross-Interrogatory: Did the person or persons who purchased said land for you acqiure any interest therein in their own behalf?

4th Cross-Interrogatory: Has any of the persons who

negotiated the purchase of the interest in any part of said lands now claimed by you, any interest in any part thereof; if you answer yes, state what that interest is, and when, and from whom, and how acquired.

5th Cross-Interrogatory: State fully the interest of each person in said land beside yourself, and how, when, and from whom the interest of each was acquired.

JOHN R. VAN DERLIP,
Attorney for Petitioners.

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The following are the answers made under oath by Simon J. Murphy to the cross-interrogatories hereunto annexed:

1st. A. No, execept as shown by the government plat, the purchase being largely for the lake frontage for lumbering purposes, and on the basis of a rate per stumpage for all the timber clear to the water's edge of Lake Ely.

2nd. A. At Detroit, my home. Robinson & Flinn of Detroit were associated with me in the negotiations of upwards of 125 million feet of lumber.

3rd. A. Mr. Robinson and Mr. Flinn acquired each an undivided one-sixth interest by contract at the time of purchase, to be deeded to them on full payment by each of a 260
one-sixth cost of said timber, with interest. About 1889, I gave Mr. Robinson a deed to his one-sixth interest upon his full payment for the same; Mr. Flinn still holding his contract interest for the same. Also, about 1890, I deeded Mr. Dorr of Saginaw, a partner of mine in the lumber business, a one-sixth interest upon his making the full payment for the same with interest.

4th. A. Answered in number 3. No other person has any interest in the title to said lands.

5th. A. Answered in number 3.

(Signed) SIMON J. MURPHY.

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United States of America.

United States Circuit Court, District of Minnesota, Eighth Judicial District, Fifth Division.

ORDER TO SHOW CAUSE AND RESTRAINING ORDER.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn, and Temple E. Dorr, Complainants,

~~In Equity~~. vs.

262 P. K. Kirwan as United States Surveyor General for the District of Minnesota, and Thomas Coaswell, Defendants. In Equity

To P. K. Kirwan, United States Surveyor General for the State of Minnesota, and Thomas Coaswell:

You are hereby ordered to show cause before this Court at the chambers of the judge in the Federal Building in the City of Minneapolis in said District on Thursday the seventh day of January, A. D. 1897, at ten o'clock in the forenoon on said day or as soon thereafter as counsel can be heard, why the temporary injunction of this court shall not issue restraining you, your agents, servants and attorneys
263 during the pendency of the above entitled action from entering into any contract, or perfecting a contract partially entered into for a survey of the lands hereinafter described, or any part thereof, or from surveying the same yourself, or causing the same to be surveyed in any manner. Said lands are situated in the county of St. Louis, State of Minnesota, and described as follows, to-wit:

Sections one (1), two (2), three (3), four (4), five (5), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), township fifty-seven (57) north of range seventeen (17) west.

You are also ordered and restrained until the further or-
264 der of this Court from in any manner entering into a contract, or perfecting a contract partially entered into for the survey of the above described lands or any part thereof and from surveying the same or any part thereof.

Let this order together with all the papers hereto attached be served on said defendant forthwith by delivering to him true copies thereof, and exhibiting to him this original order.

Dated 21st day of December, 1896.

WM. LOCHREN, Judge.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed notice of motion, affidavits and order to show cause, etc., on the therein named defendant Thomas Coaswell whose true name is Thomas H. Croswell by handing to and leaving true and correct copies thereof with him and by exhibiting to said defendant the signature of the Court to said original order to show cause, etc. personally at 4 mi E. Eveleth in said District on the 23rd day of December, A. D. 1896. 265

R. T. O'CONNOR, U. S. Marshal.
By T. J. SHEEHAN, Deputy.

Fees, $28.66.

United States of America,
District of Minnesota—ss.

I hereby certify and return that I served the annexed notice of motion, affidavits and order to show cause, etc., on the herein named defendant P. K. Kirwan, as United States Surveyor General for the District of Minnesota, by handing to and leaving true and correct copies thereof with him, and by exhibiting to said defendant the signature of 266 the Court to said original order to show cause etc. personally at Saint Paul in said District on the 22nd day of December, A. D. 1896.

R. T. O'CONNOR, U. S. Marshal.
By J. M. REDDING, Deputy.

Indorsed: Filed Jany. 2nd, 1897. Henry D. Lang, Clerk.
By L. Davies, Deputy.

United States Circuit Court, District of Minnesota, Fifth Division.

S. J. Murphy et al. 267

vs.

P. K. Kirwan et al.

State of Minnesota,
County of St. Louis—ss.

Thomas Croswell being first duly sworn says that he is one of the above named defendants, that he had commenced work under a contract with the Government of U. S.

whereby he had agreed to survey the land in question and given bonds to have this work done by a certain date—that he was restrained by the order of this Court in this case from proceeding with his work—that he has already been damaged several hundred dollars by this order, and by this action of the complainants—and will be damaged very much more if this temporary injunction shall be granted, he therefore asks that the Court require the plfts. forthwith, before being heard in this action to file their bond, for an amount with proper sureties to secure this deft. Croswell
268 from any and all damages that he has or may sustain by the restraining order that has been made or any that shall be made in this case, in case plff. shall fail to maintain their rights to the relief demanded in this complaint and petition.

THOMAS H. CROSWELL.

Subscribed and sworn to before me this 7th day of Jany. 1897.

ALBEE SMITH,
Notary Public, Hennepin County, Minn.

269 (Notarial Seal)

Indorsed: Filed Jany. 7th, 1897. Henry D. Lang, Clerk. By L. Davies, Deputy.

United States of America.

United States Circuit Court, District of Minnesota, Eighth Judicial District, Fifth Division.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple O. Dorr, Complainants,

~~In Equity.~~ vs.

P. K. Kirwan as United States Surveyor General for the
270 District of Minnesota and Thomas Coaswell, Defendants.

In Equity

State of Minnesota,
County of Hennepin—ss.

John R. Van Derlip being first duly sworn, says, that he has read the bill of complaint in the above entitled action and is familiar therewith; that he is the attorney for G. A. Burns and others, some of whom are referred to in said bill, and who are settlers upon and now occupying the land re-

ferred to in said bill, lying between the old meander boundary of Cedar Island Lake, as the same is shown upon the Government plat of said lake, in township 57 north of range 17 west in St. Louis county, Minnesota, and the actual water line of said lake.

That, as such attorney, he prepared and on or about the 14th day of August, at Washington, D. C., a petition from such settlers praying for an investigation of the facts concerning said land and the pretended survey thereof made by U. S. Deputy Surveyor Howe in June 1876, and asking for a survey of said land, if the facts warranted the same. 271

That said petition was wholly denied by the Commissioner by an order filed on or about October 6th, 1893.

That on December 15th, 1893, an appeal from said decision of the Commissioner was duly allowed by the Secretary of the Interior, and on or about the 19th day of January, 1895, the Secretary of the Interior duly made and filed his decision and order reversing the decision appealed from and directing that a hearing be had before the United States Surveyor General for the District of Minnesota to determine the facts in relation to said land and to report the same with his recommendation thereon to the Land Department of the United States. 272

That upon said appeal the complainants in the above entitled suit were represented by counsel who duly appeared and opposed the same; that thereafter and on or about the 2nd day of March, 1895, the complainants duly made application to the Secretary of the Interior for a re-hearing upon said appeal, which application was thereafter and on or about the 8th day of April, 1895, refused by said Secretary.

That on the 12th and 13th days of June, 1895, the hearing ordered, as aforesaid, was had before the Surveyor General for the District of Minnesota, at the city of Duluth, at which hearing complainants in this suit were represented by M. H. Stanford, and took part in the examination and cross-examination of witnesses; thereafter said Surveyor General duly made and filed his report of said hearing, with his opinion, setting out that the survey made by Howe in June, 1876, was fictitious and fraudulent, and recommending that a survey of said lands be ordered by the Land Department. 273

On or about September 16th, 1895, the complainants in this suit, by M. H. Stanford and Copp & Luckett, their attorneys, duly appealed from the report and recommendation of said Surveyor General to the Commissioner of the General Land Office, and such proceedings were thereafter had upon said appeal that said Commissioner duly made and filed his order and decision on the 31st day of October, 1895, approving said report and recommendation, and directing said Surveyor General to contract for and cause to be made a survey of said lands.

274 That on or about the 2nd day of January, 1896, the complainants in this suit duly appealed from said order of the Commissioner of the General Land Office to the Secretary of the Interior, and such proceedings were had upon said appeal, that hereafter and on or about the 29th day of October, 1896, the Secretary of the Interior duly made and filed his order and decision affirming the order appealed from directing the Commissioner of the General Land Office to cause a survey to be made of said land.

That on the 5th day of November, 1896, said commissioner duly made an order directed and transmitted to the Sur-
275 veyor General for the District of Minnesota directing him to make the survey sought to be restrained in this action.

Affiant further says that he was the attorney for the said petitioners in all of the proceedings referred to in this affidavit and has personal knowledge of all the matters and things herein set out.

That this affidavit is made for the purpose of opposing an application made by the plaintiffs in this suit for a preliminary injunction restraining the defendants from proceeding with the survey ordered as aforesaid by the Commissioner of the General Land Office.

276 JOHN R. VAN DERLIP.

Subscribed and sworn to before me this 6th day of January, 1897.

(L. S.) ETTA McCALL,
Notary Public,
Hennepin County, Minnesota.

Indorsed: Filed April 10, 1897. Henry D. Lang, Clerk. By T. H. Pressnell, Deputy.

United States Circuit Court for the District of Minnesota, Fourth Division.

Term Minutes September Term, A. D. 1896.

January 7th, 1897.

Thursday morning. Court opened pursuant to adjournment.

Present: Hon. William Lochren, U. S. District Judge.

HENRY D. LANG, Clerk. 277
By R. C. MABEY, Deputy.
JAMES CONWAY, Crier.

Simon J. Murphy, et al.

No. 254. vs. Fifth Division Case.

P. H. Kirwan, et al.

This cause coming on to be heard upon the return to the order to show cause why a temporary injunction should not issue in said cause, dated the 21st day of December, 1896, and filed herein, the complainants appear by M. H. Stanford, Esq., their attorney, and the defendants by E. C. Stringer, Esq., U. S. District Attorney, and Messrs. Wilson & Vanderlip, their solicitors. 278

Defendants by their solicitors, move the Court to discharge said order to show cause, which motion is argued by the solicitors for the respective parties, duly submitted, and the Court being fully advised in the premises, it is

Ordered, that said motion be, and the same is hereby denied.

The answer of said defendant filed herein was read by defendants as a part of the return on the order to show cause. 279

The return to said order to show cause is then argued by the solicitors for the respective parties, duly submitted, and by the Court taken under advisement.

United States of America,
District of Minnesota,
Fifth Division—Set.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that

I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such Clerk, and that such copy is a correct copy of such original, and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the seal of said Court. Done at my office in Minneapolis, Minnesota, this 7th day of January, A. D. 1897.

(Seal U. S. Cir. Ct. HENRY D. LANG, Clerk.

280 Dist. of Minn. By R. C. MABEY, Deputy.
Fourth Div.)

Indorsed: Filed, Jany. 15th, 1897. Henry D. Lang, Clerk. By L. Davies, Deputy.

That afterwards, to-wit, on the 11th day of January, A. D. 1897, there was filed with the Clerk of said Court the joint answer of the defendants in said cause, which said answer is, in words and figures, as follows, to-wit:

Title of Court and Cause.

INJUNCTION BOND.

281 Know all men by these presents, that Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr as principals and Daniel T. Adams and Albert M. Marshall of Duluth, Minn., sureites are held and firmly bound unto P. H. Kirwan, Surveyor General of the United States for the District of Minnesota, and Thomas H. Croswell, who as P. K. Kirwan and Thomas Coaswell are the defendants in the above entitled action (the said P. K. Kirwan and P. H. Kirwan being the same person and the said Thomas Coaswell and Thomas H. Croswell being the same person), in the sum of five thousand ($5000) dollars, lawful money of the United States, to be paid unto the said P. H. Kirwan, to his successor in office and Thomas H. Croswell, their heirs, ex-
282 ecutors, administrators or assigns, for which payment well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 11th day of January, A. D. 1897.

The condition of this obligation is such that whereas, the above named plaintiffs have duly applied for a Writ of Injunction against said defendants in this action according to the statute in such case made and provided:

Now, therefore, if the said complainants shall pay to the said defendants such damages as they sustain by reason of the said Writ, if the Court finally decide that the said complainants are not entitled thereto, then this obligation shall be void, otherwise of force.

In testimony whereof, we have hereunto set our hands and seals on this 11th day of January, A. D. 1897.

SIMON J. MURPHY, (Seal)
GEO. O. ROBINSON, (Seal)
ELISHA H. FLINN, (Seal) 283
TEMPLE E. DORR, (Seal)
DAVID T. ADAMS, (Seal)
ALBERT M. MARSHALL, (Seal)

Signed, sealed and delivered in presence of

Fred A. Robinson,
Robert W. Bell,
as to G. O. R. and E. H. F.
A. C. McQueen,
as to S. J. M.
as to Temple E. Dorr.
John O. Gorman, 284
Osce Fauley,
Witnesses as to Albert M. Marshall.
~~R. C. Rogers~~,
M. H. Stanford, Mary Dalcour
Witnesses as to
D. T. Adams,
~~Mary Dalcour~~. R. C. Rogers
M. H. Stanford

State of Michigan,
County of Wayne—ss.

Be it known, that on this 11th day of January, A. D. 1897, came before me personally George O. Robinson and Elisha 285
H. Flinn to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged the same to be his free act and deed.

(Notarial Seal) FRED A. ROBINSON,
Notary Public, Wayne Co., Mich.

State of Michigan,
County of Saginaw—ss.

Be it known that on this 23rd day of January, A. D. 1897,

came before me personally Temple E. Dorr, to me known to be the same person who executed the foregoing bond and acknowledged the same to be his free act and deed.

(Notarial Seal) OSCE FAULEY,
Notary Public in and for Saginaw County, Michigan.

Territory of Arizona,
County of Maricopa—ss.

286 Be it known, that on this 15th day of January, A. D. 1897, came before me personally Simon J. Murphy, resident of Detroit, Michigan, to me well known to be the same person who executed the foregoing bond and acknowledged the same to be his free act and deed.

(Notarial Seal) D. A. SPRAGG,
Notary Public, Maricopa County, A. T.

State of Minnesota,
County of St. Louis—ss.

287 On this 30th day of January, A. D. 1897, before me personally appeared David T. Adams, and Albert M. Marshall to me well known to be the person described in and who executed the foregoing annexed instrument, and ackowledged that they executed the same as their free act and deed. I further certify that the words "as principals and David T. Adams and Albert M. Marshall of Duluth, Minn., sureties" were interlined on the first page of the annexed bond before the same was executed.

(Notarial Seal) M. H. STANFORD,
Notary Public in and for St. Louis County, Minnesota.

288 State of Minnesota,
County of St. Louis—ss.

David T. Adams and Albert M. Marshall the sureties named in and who executed the foregoing bond, being first duly sworn, doth, each for himself, depose and say, that he is a resident and freeholder of the State of Minnesota and worth the amount of ten thousand (10,000) dollars, above

his debts and liabilities, and exclusive of his property exempt from execution.

DAVID T. ADAMS,
ALBERT M. MARSHALL.

Subscribed and sworn to before me this 30th day of January, A. D. 1897.

(Notarial Seal) M. H. STANFORD,
Notary Public in and for St. Louis County, Minn.

Indorsed: The within bond and the sureties thereon, is hereby approved, in the absence of the Judge from the District. Henry D. Lang, Clerk. By T. H. Pressnell, Deputy. Filed January 30, 1897. Henry D. Lang, Clerk. 289

By T. H. Pressnell, Deputy.

ORDED FOR INJUNCTION.

United States of America.

United States Circuit Court, District of Minnesota, Eighth Judicial Circuit, Fifth Division.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple O. Dorr, Complainants, 290

~~In Equity~~. vs.

P. K. Kirwan as United States Surveyor General for the District of Minnesota, in the bill of complaint herein called P. K. Kirwan and Thomas H. Croswell, in the bill of complaint herein called Thomas Coaswell, Defendants. In Equity

The hearing on the motion and order to show cause before this Court at the Chambers of the Judge in the Federal Building in the City of Minneapolis on Thursday the 7th day of January, A. D. 1897, having been brought for hearing on due notice served upon the defendants herein praying 291 that a temporary injunction of this Court should issue restraining the defendants during the pendency of the above entitled action from entering into any contract, or perfecting a contract partially entered into, for the survey of lands in the said bill of complaint described, or any part thereof, from surveying the same or causing the same to be surveyed in any manner, said lands being situated in the County of St. Louis, State of Minnesota, described as follows, to-wit:

Sections one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), township fifty-seven (57), north of range seventeen (17), west; all parties being present, and after reading the bill of complaint herein, and the answer of the defendants, and after hearing the argument of Wilson & Vanderlip, counsel for defendants, and Edward C. Stringer, United States Attorney, solicitor for the defendants, in opposition thereto, and M. H. Stanford, solicitor for the complainants, in sup-
292 port of said motion and order to show cause.

It is ordered, that on filing an injunction bond signed by the above named complainants, with two sureties, residents of the State of Minnesota, in the penal sum of five thousand dollars ($5,000), said sureties to justify in the sum of ten thousand dollars ($10,000) each, said bond to be approved by the Clerk of said Court, that an injunction issue out of this Court restraining the above named defendants, their servants, agents or attorneys, during the pendency of the above entitled action, or until the further order of this Court, from entering into any contract, or perfecting a contract partially entered into, for the survey of the lands hereinbefore de-
293 scribed, or any part thereof, or from surveying the same or causing the same to be surveyed. That the restraining order heretofore made in this action shall stand and be of full force and effect until the injunction shall issue as ordered.

WM. LOCHREN, Judge.

Minneapolis, April 2, 1897.

Indorsed: Filed April 3, 1897. Henry D. Lang, Clerk.

By T. H. Pressnell, Deputy.

United States of America.

United States Circuit Court, District of Minnesota, Eighth
294 Judicial Circuit, Fifth Division.

TEMPORARY INJUNCTION.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple & Dorr, Complainants,

~~In Equity~~. vs.

H. P. Kirwan as United States Surveyor General for the District of Minnesota, in the bill of complaint herein called P. K. Kirwan and Thomas H. Croswell, in the bill of complaint herein called Thomas Coaswell, Defendants.

In Equity

The United States of America, to the Defendants H. P. Kirwan and Thomas Croswell:

Whereas, the complainants Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr have filed their bill of complaint and motion in the above Court praying among other things that the temporary injunction of this Court should issue restraining the defendants during the pendency of the above entitled action or until the further order of this Court, from entering into any contract, or perfecting any contract partially entered into, for the survey of lands in the said bill of complaint described, or any 295
part thereof, from surveying the same or causing the same to be surveyed in any manner, and it appearing to the satisfaction of this Court from the said bill of complaint and motion and the affidavits and proofs in support thereof duly submitted, that sufficient grounds exist therefor, and the necessary and proper bond having been given and approved, and filed with the Clerk of said Court,

Now, therefore, in consideration thereof, and of the particular matters in said bill of complaint and motion set forth, you, and each and every of you, are strictly commanded that, until the further order of this Court, you and each of you, your and each of your servants, agents, attorneys, 296
employes, and all persons acting under the control, authority or direction of you or either of you, do absolutely refrain and desist from entering into any contract, or perfecting any contract partially entered into, for the survey of lands in said bill of complaint described, or any part thereof, from surveying the same or causing the same to be surveyed in any manner, said lands being situated in the County of St. Louis, State of Minnesota, described as follows, to-wit:

Sections one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), township fifty-seven (57), north of range seventeen (17) west. 297
And this Injunction you will observe under the penalty of the law.

Witness, the Honorable Melville W. Fuller, Chief Jstice of the United States the 10th day of April, A. D. 1897, and of the Independence of the United States of America the one hundred and twenty-first.

U. S. Circuit Court
Seal Dist. of Minn.
Fifth Division.

HENRY D. LANG, Clerk.
By T. H. PRESSNELL, Deputy.

TED STATES OF AMERICA)
istrict of Minnesota)-ss
[illegible] certify and return that I served the an-
[illegible] Injunction on the therein named De-

POOR COPY

COPY BOUND CLOSE IN CENTER

Now, therefore, in consideration thereof, [illegible] ticular matters in said bill of complaint and motion set forth, you, and each and every of you, are strictly commanded that, until the further order of this Court, you and each of you, your and each of your servants, agents, attorneys, 296
employes, and all persons acting under the control, authority or direction of you or either of you, do absolutely refrain and desist from entering into any contract, or perfecting any contract partially entered into, for the survey of lands in said bill of complaint described, or any part thereof, from surveying the same or causing the same to be surveyed in any manner, said lands being situated in the County of St. Louis, State of Minnesota, described as follows, to-wit:

Sections one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and sixteen (16), township fifty-seven (57), north of range seventeen (17) west. 297
And this Injunction you will observe under the penalty of the law.

Witness, the Honorable Melville W. Fuller, Chief Jstice of the United States the 10th day of April, A. D. 1897, and of the Independence of the United States of America the one hundred and twenty-first.

U. S. Circuit Court
Seal Dist. of Minn.
Fifth Division.

HENRY D. LANG, Clerk.
By T. H. PRESSNELL, Deputy.

[illegible] STATES OF AMERICA)
[illegible]strict of Minnesota)-ss
[illegible] hereby certify and return that I s erved the an-
[illegible] temporary Injunction on the therein named De-
[illegible] P.H.Kirwan,asU.S.SurveyorGeneral for the
[illegible] of Minnesota by handing to and leaving a true
[illegible]rect copy thereof with him at St.Paul in said
[illegible] on the 14th. day of April A.D.1897.
[illegible]12 R.T.O'Connor U.S.Marshal
By Frank A.Donahower,Deputy.

[illegible]TATES OF AMERICA)
[illegible]t of Minnesota)-ss.
[illegible]y certify and return that I servedthe a
[illegible]porary Injunction on the therein named
[illegible] Thomas H.Croswell by handing to and
[illegible] a true and correct copy thereof with him
[illegible]ip at St.Paul,in said district on the 23rd.
[illegible]me A.D.1897 .R.T.O'Connor. U.S.Marshal.
By F.A.Donahower, Deputy .

STIPULATION OF FACTS AND EVIDENCE.

United States of America.

United States Circuit Court, District of Minnesota, ~~Eighth Judicial Circuit~~, Fifth Division.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple O. Dorr, Complainants,

vs.

298 P. H. Kirwan, as United States Surveyor General for the District of Minnesota and Thomas H. Croswell, Defendants.

It is hereby stipulated by the respective parties above named that upon the trial of the above entitled suit, the copy of the deposition of Elisha H. Flinn, taken before the United States Surveyor General, at the St. Louis Hotel in the City of Duluth, Minnesota, on the 18th day of June, 1895, in the Matter of the Petition of G. A. Burns et al., and the copy of the deposition of Simon J. Murphy, taken upon interrogatories and cross-interrogatories propounded to him in the same proceeding on the 11th day of June, 1895, which
299 copies are attached hereto, marked "A," may be offered in evidence by either party to this suit, with the same force and effect as if each of said depositions had been taken in this suit; that the following statement of facts is hereby admitted to be true, for the purposes of this suit, and no proof need be produced or offered by any party upon the trial of the above entitled suit as to any of said facts, AND SAID COURT SHALL BE AT LIBERTY TO DRAW THE SAME INFERENCES THEREFROM THAT IT MIGHT DRAW IF THE SAME FACTS WERE ESTABLISHED BY EVIDENCE BEFORE IT UPON TRIAL, and they may be taken by said Court to be true. Said depositions and stipulations of facts to be subject to the right of any party to object to
300 any part thereof as incompetent, irrelevant or immaterial under the issues presented by the pleadings herein. Either party hereto may take proof upon any issue in this case not in conflict with the facts hereby stipulated.

STATEMENT OF FACTS.

1. The defendant Thomas H. Croswell is and at the time of the commencement of this suit was, a deputy surveyor of the United States, duly appointed and authorized as such by contract and bond, of which copies are attached to the ans-

wer herein, marked Exhibit "A," and which have been duly approved by the Commissioner of the General Land Office as provided by law.

2. On or about April 26th, 1876, a contract for the survey of all lands in township Fifty-seven (57) north of range seventeen (17) west, in St. Louis county, Minnesota, was made by the Government of the United States with one Henry S. Howe, as a Deputy Surveyor of the United States.

3. Thereafter said Howe made and filed what purported to be field notes of a survey of said township, from which a 301
purported plat of said township was thereafter made, and approved by the Surveyor General for the District of Minnesota, and by the Commissioner of the General Land Office, of which plat Exhibit "A" attached to the bill of complainants herein is a substantially correct copy.

4. There is no evidence upon the ground that any actual survey of said township fifty-seven (57) was ever made by said Howe, as required by his said contract, or by the rules and regulations of the General Land Office, or at all, beyond running and due marking of the exterior boundary lines of said township, where the section, quarter, and other
posts and markings established by him are, and always have 302
been, clear, distinct and readily found and traced. There is no evidence that section lines were ever run by him in or across said township, or section corner posts or quarter posts ever located or set by him, except a corner post at the northwest corner of section thirty-six (36), and a quarter post in the western line of said section thirty-six (36), and there is no evidence that witness trees were ever blazed or marked by him.

Cedar Island Lake is a navigable, deep and permanent body of water, fed principally by springs, having an area of about nine hundred (900) acres, instead of about eighteen
hundred (1800) acres as described in the field notes of Howe 303
and shown upon the government plat; instead of the shores of the lake being low and swampy, as stated in said field notes, the banks are generally high and sloping lands of an agricultural quality, extending around the lake, and they supported in 1876, a good growth of pine and other forest trees large enough for lumbering, which trees will not grow in water, and still exist thereon; that the character of the lake and the land surrounding it was practically the same in 1876 that it is today ;that no material part of the land

surrounding the lake is accretion or reliction; THAT SOUTHERLY AND WESTERLY OF CEDAR ISLAND LAKE ARE FIVE OTHER DEEP, NAVIGABLE AND PERMANENT LAKES, LYING IN THE SAME TOWNSHIP, NONE OF WHICH IS SHOWN BY THE HOWE SURVEY OR UPON THE GOVERNMENT PLAT THEREOF, AND SAID LAKES HAVE BEEN SOLD BY THE GOVERNMENT AS LAND; that at divers times, from a time soon after the survey was puported to have been made down to the present, competent woodsmen have made exam-
304 ination of the lands in said township, and since the winter of 1893 and 1894, various surveys thereof have been made by competent surveyors, but no monument, section corner or quarter post, meander monuments, or any blazed lines or trees have ever been found except on the boundary lines of the township and on the western line of section thirty-six (36), and at the northwest corner thereof; that none of the posts, monuments, lines or witness trees specified in the field notes of Howe have ever been discovered, except as above stated, and that at many places where they purport to have been established by him, said points are in lakes, then and now deep and permanent, and where the water is
305 upward of thirty feet in depth; that the outlet stream of the lake did not run, at the time of said survey, as described in said field notes and as delineated upon said plat, but left, and, still leaves, the lake at a point that would be near the southwest corner of section two (2) of said Government plat, instead of in section eleven (11), and runs southeasterly, instead of southwesterly, emptying into the St. Louis river near the southwest corner of section twenty-five (25) in the easterly tier of sections in said township.

5. There is no evidence that any meander line of said lake was ever surveyed by said Howe, or any meander posts placed by him about said lake, except one where the north
306 line of said township encounters said lake. The land lying between the actual water line of said lake and the meander line of said lake, as delineated upon the government plat of said township, comprises the land in controversy in this suit, and is the land directed to be surveyed by the Commissioner of the General Land Office, and referred to in the surveyor's contract, Exhibit "A," attached to said answer.

6. The land in said township south of said lake is generally lower than that surrounding said lake, and if Cedar Island Lake covered the land shown upon said government

plat it would necessarily cover the entire township lying to the south thereof.

7. Prior to the purchase by complainants, or by any of them, of any of the lands surrounding said lake as platted, in sections two (2), three (3), four (4), nine (9), ten (10), and eleven (11), in said township fifty-seven (57), said lands were at their instance and in their behalf, examined by experienced and competent woodsmen, and the general and riparian character thereof ascertained, and the quantity of timber thereon estimated and reported by such woodsmen to said complainants before they purchased said lands? 307

8. Said woodsmen, and all land-lookers and estimators, were, and are, accustomed to locate, survey and examine public lands and timber lands by reference to, and by the aid and direction of, the purported government plats relating to such lands, and of the section and other posts, lines and markings established by the government surveyor upon such lands; but when said lands were so examined as aforesaid, and when the complainants, and each of them, acquired the interests in the respective tracts of land surrounding said lake now claimed by them, respectively, it was impossible to locate any government subdivision in said township, 308 except by measurement from the exterior lines of said township, by reason of the entire absence of interior lines or markings, and of corner and quarter posts; and at the time said lands were originally entered in the Government Land Office, location thereof, except as aforesaid, was likewise impossible.

But complainants do not, by the stipulations of this paragraph, admit that they had any actual knowledge of the facts therein stated, at the time they acquired said lands.

9. Prior to the commencement of this suit, the United States had patented, according to the government plat of the Howe survey thereof—which is the only government plat 309 of said township—all the fractional government lots in said township reported in the field notes returned by said Howe; and all other lands in said township, outside of the meander line of Cedar Island Lake, shown by the field notes and plat of said Howe survey, had then been patented by the government. The complainants are the grantees and holders, by mesne conveyances from the patentees, of the record title to the following fractional lots in said township, to-wit: one (1), two (2), and three (3) in section two (2); one (1) and

two (2) in section three (3); one (1) and eight (8), and portions of three (3), five (5) and six (6) in section four (4); one (1), two (2), three (3) and four (4) in section nine (9); one (1), two (2), three (3) and four (4) in section ten (10), and lot three (3) in section eleven (11).

But the admissions of fact in this paragraph are not to be construed as an admission by defendants that the lands in controversy were included in patents issued for lands in said township; neither are they to be construed as an admission
310 by complainants that the lands in controversy are not included in said patents.

10. The other permanent lakes existing in said township, and not shown upon said government plat, cover an aggregate area equal to the area of Cedar Island Lake. The patent title to a portion of said lakes was purchased by complainants as land, with their other purchases in said township.

11. The survey sought to be restrained in this suit was ordered by the Commissioner of the General Land Office upon the direction of the Secretary of the Interior, in a proceeding instituted by certain settlers upon the lands in con-
311 troversy in this suit, of which proceedings the complainants had due notice, and in which they duly appeared. The decision of Secretary Smith in said proceeding is duly reported in 20 Land Decisions, page 28, and may be used upon the hearing hereof, and Exhibit "C" attached to the answer herein ,is a true copy of the decision of Secretary Francis in said proceeding. Exhibit "2" attached to the bill in this suit, is a copy of the order of the Commissioner of the General Land Office for the making of the survey sought to be restrained in this suit, and the contract for said survey was made pursuant to said order, and not otherwise.

Exhibit "D" attached to the answer of the defendants in
312 this suit, is a true copy of the instructions prepared and delivered to the defendant Croswell and the Surveyor General, pursuant to which said survey was commenced, and was conducted until the service of the restraining order in this suit.

Dated, October 29, 1898.

ROBT. G. EVANS,
U. S. Attorney, Solicitor for Defendants.
M. H. STANFORD,
Solicitor for Complainants.

DEPOSITION OF ELISHA H. FLINN.

Q. Where do you reside? A. In Dertoit, Mich.

Q. How long have you lived there? A. Thirty years.

Q. State if you were one of the owners of the land which is in controversy?

Objected to as calling for a conclusion, and as incompetent.

A. Yes, sir.

Q. What knowledge have you of land about Ely Lake in township 57-17 in this county, Mr. Flinn? 313

A. I have no personal knowledge, never was in the township until day before yesterday, was in section 5.

Q. State what you had to do, if anything, with negotiations of purchasing this land for S. J. Murphy of Detroit?

A. I attended to the details of the purchase.

Q. State what was the basis of such purchase?

A. We purchased those lands. You want me to give the different purchases for different individuals? We purchased those lands for the pine timber and also for the lake frontage, we having a large amount of timber just north in township fifty-eight (58-17) and at that time considered that as the only outlet for the timber. The purchase of the lan in section 11, 57-17 was largely for the outlet, as we suppos- 314 ed, of the lake; also the timber on land in the western part of the lake in 9 was purchased to control that portion in case we should dam the lake as a reservoir. We had no knowledge whatever of any fraud or anything of that kind in connection with this survey.

Q. How about what you supposed to the outlet of the lake?

A. Supposed it was on section 11.

Q. You secured that to control the outlet?

A. Largely for that purpose; there was some timber on it too.

Q. Wouldn't ~~you~~ have bought it except for that? A. 315 No.

Q. How about that in section 9 covered by the waters of St. Marie's Lake? A. This is the first I knew of it when I saw the plat here, that our land on section 9 was mostly under the waters of St. Marie's Lake.

Q. Supposed all the time it was timber land? A. Yes.

MR. VAN DERLIP:

Q. The government plat that you speak of, Exhibit "A"

is a certified copy, isn't it? A. It looks just exactly like it.

(Signed) ELISHA FLINN.

Before the United States Surveyor General, at the St. Louis Hotel, in the City of Duluth, Minnesota, on the 11th day of June, A. D. 1895.

"A."

Interrogatories to be propounded to Simon J. Murphy of
316 Dertoit, Michigan, on the following interrogations:

1st Interrogatory: What is your name, age and occupation, and where do you reside?

2nd Interrogatory: State what interest you have, if any, in any portion of the following described lands situated in St. Louis county, State of Minnesota, viz: Sections 2, 3, 4, 9, 10 and 11, township 57 N. R. 17 W., 4th Principal Meridian of Minnesota, and state the particular description thereof in which you have or claim interest, if any?

3rd Interrogatory: If you state you have, or claim to have, an interest in such land, state when, and of whom, you purchased the same, and the land and interest originally pur-
317 chased by you, and where you resided at the time you made such purchase.

4th Interrogatory: If you say in answer to preceding interrogatories that you purchased any portion of such land, state what you supposed to be the true boundaries of such piece of land so purchased by you, at the time you made such purchase.

5th Interrogatory: At the time you made such purchase what evidence of the boundaries of each of such descriptions so purchased by you, did you examine?

6th Interrogatory: What did you rely upon as the evidence of the true boundaries of such land at the time you made such purchase?

318 7th Interrogatory: What was the basis of the purchase price of each piece of said land so purchased and paid for by you?

8th Interrogatory: When did you first hear of an alleged fraud in connection with the original government survey of this land?

9th Interrogatory: Before or at the time you closed the purchase of said land, had you heard of any fraud or rumors of fraud connected with the original government survey of said land?

The following are answers under oath of Simon J. Murphy to the ~~foregoing~~ interrogatories: Interrogs. answered

1. A. Simon J. Murphy. Aged eighty years. Occupation has always been that of a lumberman. Reside at Detroit, Michigan.

2. A. I own an undivided one-half interest in lots 1, 2, 3 of section 2; lots 1, 2 of section 3; lots 1, 8 of section 4; lots 1, 2, 3, 4 in section 9; lots 1, 2, 3, 4 of section 10; lot 3 of section 11, town 57 north, range 17 west; lot 2 of section 35; and lots 1, 2 of section 34, town 58 north, range 17 west, St. Louis County in the State of Minnesota. 319

3. A. On or about the 11th of April, 1883, I purchased the entire title from Philip M. and Edmond D. Graff and Daniel E. Little to lots 2, 3, 4 of section 1; lots 1, 2 of section 3; lots 1, 8 of section 4; lot 4 of section 9; lots 1, 2 of section 10, in town 57 north, range 17 west, together with lot 1 of section 34, and lot 2 of section 35, town 58 north, range 17 west. This purchase from Graff and Little included about 4000 acres tributary to Ely Lake in towns 57 and 58 north, range 17 west.

4. A. On or about February 16th, 1884, I purchased of Morris Thomas of Duluth, Minnesota, lots 1, 2, 3 of section 2, besides 80 acres on section 9 in same town. On or about 320
..... 1884, I purchased of the Nelson Lumber Company of Cloquet, Minnesota, lots 3, 4 of section 10; lot 3 and NW ¼ of SW ¼ of section 11; town 57 north, range 17 west, and lot 2 of section 34, town 58 north, range 17 west, besides about six hundred acres in sections 13, 14 and 34, town 58 north, range 17 west. On the 5th day of April, 1883, I purchased of Scot Griswold of Kent County, Michigan, lots 1, 2, 3 of section 9, and one hundred and sixty acres in sections 8 and 9, town 57 north, range 17 west, in same county. I also purchased about that time and since then other considerable tracts of pine timber in other parts of St. Louis County and Minnesota for the usual purpose of lumbering. 321

I purchased these lands for their pine timber, and originally took the title in my own name, intending to lumber the timber in the two towns above described into Ely Lake, in the usual manner of lumbering by water. At that time there were no railroads contemplated in that locality, and I bought the lands around Ely Lake to facilitate the lumbering operations of this surrounding tract of pine timber, in the usual course of business, without any knowledge of any special excess in any of the descriptions. Since the time of

this purchase I have deeded an undivided one-sixth interest in and to these lands to George O. Robinson of Detroit, Mich., and an undivided one-sixth interest to Temple E. Dorr of Saginaw, Mich., a former partner of mine in the lumber business, and have contracted to sell an undivided one-sixth interest to Elisha H. Flinn of Dertoit, Mich., where I have resided for the last twenty-five years.

5. A. When I purchased these lands around Ely Lake I relied upon the plats and government descriptions that they were bounded by the lake. I bought and paid for the
322 timber, which was estimated up to the lake shore, at the rate of about $1.65 per thousand feet at that time, which estimate included all of the timber up to the shore of the lake. The patents to all of the above described lands have been duly issued and delivered and are now in my possession, and my chain of title from the government I consider complete.

6. A. I took the report and examination of my woodsmen, relying on the government plat that the lands were bounded by the lake. I made no examination of the lands personally.

7. A. Upon the government descriptions and boun-
323 daries and upon the plats which I examined.

8. A. The object and basis of said purchase of the lands bordering on Ely Lake was their value for the timber which stood upon them and the riparian rights which said lands bordering on Ely Lake possessed for the purpose of flooding said lake for a reservoir and holding ground in case of fire, and banking ground for the lumbering of said timber. At that time no railroads had been contemplated in that locality, and I expected that this timber would be brought out through the streams and I relied upon this lake with which to lumber all this timber in that vicinity, comprising in all about 5600 acres and containing an estimate of upwards of
324 60 million feet of pine timber.

9. A. Do not know that I have ever heard that there was any fraud, I have heard indirectly, long after I had made the purchase, that the survey of the lake was not very complete, but to what extent have never known. I heard such rumors about them years ago.

10. A. No.

11. A. Nothing.

(Signed) SIMON J. MURPHY.

Cross-Interrogatories to be propounded to Simon J. Murphy, of Detroit, Mich.

1st Cross-Interrogatory: Did you know the quantity of land in each government lot or subdivision purchased by you as shown by the government survey; if you answer yes, state what was the area of each tract of land bought by you in sections 2, 3, 4, 9, 10 and 11 in township 57 north of range 17 west in St. Louis County, Minn.?

2nd Cross-Interrogatory: Where were you at the time of the purchase of said land; and, if you answer that you were not upon the land itself, state who negotiated the purchase in your behalf. 325

3rd Cross-Interrogatory: Did the person or persons who purchased said land for you acquire any interest therein in their own behalf?

4th Cross-Interrogatory: Has any of the persons who negotiated the purchase of the interest in any part of said lands now claimed by you, any interest in any part thereof; if you answer yes, state what that interest is, and when, and from whom, and how acquired.

5th Cross-Interrogatory: State fully the interest of each person in said land beside yourself, and how, when and from whom the interest of each was acquired. 326

JOHN R. VAN DERLIP,
Attorney for Petitioners.

The following are the answers made under oath by Simon J. Murphy to the cross-interrogatories hereunto annexed:

1st. A. No, except as shown by the government plat, the purchase being largely for the lake frontage for lumbering purposes, and on the basis of a rate per stumpage for all the timber clear to the water's edge of Lake Ely.

2nd. A. At Detroit, my home. Robinson & Flinn of Detroit were associated with me in the negotiations of all my Minnesota lands at that time, comprising a purchase of upwards of 125 million feet of lumber. 327

3rd. A. Mr. Robinson and Mr. Flinn acquired each an undivided one-sixth interest by contract at time of purchase, to be deeded to them on full payment by each of a one-sixth cost of said timber, with interest. About 1889, I gave Mr. Robinson a deed to his one-sixth interest upon his full payment of the same; Mr. Flinn still holding his contract inter-

est for the same. Also, about 1891 deeded Mr. Dorr of Saginaw, a partner of mine in the lumber business, a one-sixth interest, upon his making the full payment for the same with interest.

4th. A. Answered in number 3. No other person has any interest in the title to said lands.

5th. A. Answered in number 3.

(Signed) SIMON J. MURPHY.

Indorsed: Filed May 4, 1899. Henry D. Lang, Clerk.

328 By Thos. H. Pressnell, Deputy.

United States of America.

Circuit Court of the United States for the District of Minnesota, Fifth Division, in Equity.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, Complainants,

vs.

329 P. H. Kirwan, as United States Surveyor General for the District of Minnesota, and Thomas H. Croswell, Defendants.

Depositions of witnesses taken before Robert M. Chamberlain, a notary public in and for the County of Wayne, State of Michigan, at his office room 43 Moffat Block, in the City of Detroit in said County of Wayne on the twenty-second day of December, A. D. 1898, at 10 o'clock in the forenoon of that day, for use on the hearing of the above entitled cause on the part of the complainants, pursuant to the notice hereto annexed marked Exhibit A.

330 On the said twenty-second day of December, A. D. 1898, the said complainants appeared by their solicitor, Fred A. Robinson, and the said defendants by Robert G. Evans, United States District Attorney for the District of Minnesota, and it was agreed between the said counsel for the respective parties that the taking of said depositions should be adjourned until Tuesday the twenty-seventh day of December, A. D. 1898 at 10 o'clock A. M. of said day, at the same place. The taking of said testimony was commenced, pursuant to said adjournment, on the twenty-seventh day of December, A. D. 1898, at 10 o'clock A. M. of said day, at

the office of Robert M. Chamberlain, a notary public in and for said County of Wayne, room 43 Moffat Block in the City of Detroit in said county, there being present Fred A. Robinson, Esq. representing the complainants and Robert G. Evans, United States District Attorney for the District of Minnesota, representing the defendants. It was agreed between the counsel for the respective parties that all objections to questions propounded to witnesses, and the answers thereto, other than as to the form of the questions, are reserved and may be made on the reading of this deposition at the hearing of said cause as fully, and with the 331
same effect, as though made at the time and noted by the officer taking the deposition. It is stipulated and agreed by the solicitors for the respective parties that the testimony of the witnesses may be taken down by stenographer in short-hand and afterwards written out by him, and that the signatures of the several witnesses to their respective depositions are hereby waived.

GEORGE O. ROBINSON, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth and nothing but the truth upon oral interrogatories propounded to him by Fred A. Robinson, solicitor for complainants, testifies as follows: 332

Q. What is your name, age, occupation, and where do you now reside?

A. My name is George O. Robinson, my age is 66 years, I reside in the city of Detroit, Michigan; my occupation is that of a retired lawyer and pine land dealer, associated with Mr. Elisha H. Flinn under the firm name of Robinson & Flinn.

Q. How long have you resided in Detroit continuously?

A. Upwards of 37 years.

Q. State what interest you have, if any, in sections ,2 3, 4, 9, 10, 11, Town 57 N. R. 17 West, St. Louis County, Minn., 333
and the particular descriptions thereof in which you have, or claim to have an interest, if any?

A. I own a one-sixth interest in the lands purchased mostly in 1883 as follows: The first purchase made of lands around Cedar Island Lake was made by warranty deed, dated on or about the 11th day of April, 1883, from Philip H. Graff and Daniel E. Little, covering a tract of pine timber in Towns 58 N. R. 17 West and 57 N. R. 17 West, located mostly north of Cedar Island Lake in sections 13, 14, 22, 23, 24, 27, 31, 32, 34, 35 in Township 58 N. R. 17 W., and

lots 2, 3, and 4 in section 1, lot 1 and 2 in section 3, lots 1 and 8 in section 4,and lot 4 in section 9, lots 1 and 2 in section 10, in Township 57 N. R. 17 W., around Cedar Island Lake; also lot 1 in section 34, lot 2 in section 35, Township 58 N. R. 17 W., paying $65,000 for the entire tract, estimated by us to contain 43,000,000 feet of timber.

Also on the 5th day of October we purchasde a second tract from Scott Griswold and wife by warranty deed, being lots 1, 2 and 3 of section 9 in T. 57 N. R. 17 W., and 160 acres in sections 8 and 9, same township.

334 Also, on or about Dec. 29th, 1883, we purchased by warranty deed from C. N. Nelson Lumber Company lots 3 and 4 in section 10, lot 3 and the northwest quarter of the southwest quarter of section 11, T. 57 N. R. 17 W., and lot 2 of section 34, T. 58 N. R. 17 W., besides 600 acres in sections 13, 14 and 34, T. 58 N. R. 17 W.

Also on or about February 16th, 1884, we purchased in the same manner of Morris Thomas, of Duluth, Minn., lots 1, 2, and 3 of section 2, the S. W. ¼ of the N. W. ¼ and the N. W. ¼ of the S. W. ¼ of section 9, in T. 57 N. R. 17 W. The title to theselandswastaken in the name of Simon J. Murphy, who furnished the money at that time for the en-
335 tire tract under an agreement with both Elisha H. Flinn and myself that each should have a 1-6 interest on paying for the same. About the same time we purchased, in connection with these tracts about 7,000 acres additional lands in St. Louis County, Minn.

Q. Where did you reside when you made said purchase, and of whom did you purchase the same, and when?

A. I resided in Detroit, and purchased these lands as above stated and at the time stated in my answer to the preceding question.

Q. At the time you purchased this land what evidence did you have of the boundary of the several descriptions?

336 A. No other evidence than the government plats and the lines and corners as found and the survey made by our woodsmen.

Q. What examination did you make of such evidence of boundaries and for what purpose did you make such examiation?

A. We made no other examination than that made by our woodsmen in identifying the land from the government plats sufficiently for the purpose of estimating the timber and locating the riparian rights on the lake.

Q. What evidence did you rely on in making said purchase?

A. We relied upon the government plats showing lots bounding on the lake and that they contained the amount of timber estimated by our woodsman.

Q. What was the basis of the purchase price of each parcel of land so purchased?

A. The basis of each purchase, as far as I recollect, was the price per thousand feet for the actual amount of timber estimated upon the entire tract as identified by our woodsman. The fractions around Cedar Island Lake were considered as of especial value, aside from the timber, for their riparian advantages for lumbering purposes. 337

Q. When did you first hear of alleged fraud in connection with the original survey of this land?

A. I never heard of any alleged or other fraud until after this controversy had been commenced, and since then I have never heard of it in any other connection.

Q. When did you first hear of inaccuracies in the original government survey of this land?

A. Some time about the years 1892 and 1893; about the time the squatters referred to in this suit commenced to take possession of the lands about the lake. 338

Q. What, if anything, had you heard of inaccuracies in the government survey of this land, or of fraud in connection therewith, before or at the time you closed said purchase?

A. I had not heard of either at that time.

Q. State what rumors of fraud, if any, you had heard in connection with the original government survey of this land before or at the time you closed the purchase of the same?

A. I had not heard of any.

Q. State what rumors of inaccuracy in said government survey, if any, you had heard before or at the time you closed said purchase? 339

A. I have no recollection of having heard at that time of any inaccuracies relating to the survey of this land, until nearly 10 years after the purchase of this land.

Q. State what circumstances, if any, had come to your knowledge before or at the time you purchased this land suggesting fraud or a suspicion of fraud or of inaccuracy in connection with said government survey?

A. Not any such circumstances came to my knowledge.

Q. In examining the evidence of the boundaries of the several parcels of land so purchased by you and the estimates of timber on the several tracts state what circumstances, if any, appeared which would suggest fraud or inaccuracy in the government survey? I refer to examination made with a view of making said purchase.

A. There were no circumstances in any way suggesting fraud or inaccuracy in the government survey in this purchase, nor were there circumstances in connection with the purchase of this land at that time differed from scores of
340 other purchases of other lands made in a similar manner.

Q. State what was the feature of this land and timber as presented to you which you relied on in making the purchase and which principally induced you to make the purchase?

A. The features presented to us in making these purchases were: 1st. The amount of timber, of which we secured in this purchase some 43,000,000 feet lying tributary to Cedar Island Lake: 2nd. The value of the boundaries on that lake to us in lumbering the timber, as at that time it appeared that this was the only outlet for this whole tract of timber, and the fact that we received this
341 tract through Mr. Thomas Presnell, a former United States Land Register gave us confidence in the regularity of the tract. About the same time we purchased other timber in T. 57 N. R. 17 W. and T. 58 N. R. 16 and 17 W. and also timber elsewhere in St. Louis County, Minn., aggregating by our estimate 125,000,000 feet of pine timber, and this tract was purchased in connection with the other tracts for the purpose of facilitating lumbering.

And upon Cross-Examination by Mr. Robert G. Evans said witness testified as follows:

Q. How much timber, Mr. Robinson, did you estimate
342 to be in the tracts of land that are in controversy in this suit at the time of the purchase?

A. I did not estimate it.

Q. I understood you to say that you paid for the lands on the basis of so much per thousand feet and it was estimated for this purpose?

A. It was all estimated in one body and reported to us as 43,000,000 feet of pine.

Q. How much did you buy in addition to the land that is in controversy at that time?

A. We bought what was estimated by our woodsman as 43,000,000 feet.

Q. How many acres were shown by the plats in that purchase?

A. I can tell by a little estimating, but I think it was about 4,000 acres.

Q. Who made the estimate of the land in question?

A. Mr. Erwin Eveleth.

Q. Is he the woodsman you referred to in your examination in chief as having made an estimate of the lands? 343

A. Yes, sir.

Q. Was this land heavily timbered or sparsely?

A. Rather heavily timbered, quality, that is the whole body.

Q. Did you have in the return from Mr. Eveleth estimates on each particular description?

A. We did not at that time.

Q. Isn't it usual for the estimator to take the plat or descriptions of land and estimate each government subdivision separately.

A. It is. Afterwards we had them all estimated separately; but in purchasing this we had to determine at once whether we would take it or not, as our option was expiring, 344 and he urged us to take it.

Q. Mr. Eveleth went over the land in person to make this estimate, did he not?

A. He had assistants, but he was there directing the work, as chief.

Q. At your request?

A. I could not say that we had affirmatively requested it, but it was in our interest.

Q. Well, he was representing you in making this examination?

A. Yes, it was for us.

Q. When you say "for us" you mean for the plaintiffs in 345 this suit?

A. Yes, I do. Mr. Murphy was then taking the title, but it was for the interest of the plaintiffs.

Q. You spoke of making no other examination than that made by your woodsman except that which was sufficient to fix riparian rights, did you in person, or any member of your firm, make any further examination of the lands than that made by Mr. Eveleth?

A. No; I referred to the examination made there for us

and reported. The lake was the outlet, we looked out for an outlet in buying timber.

Q. Mr. Eveleth made you a report in writing, did he?

A. We had a report of the estimates of the main bodies o fthe tract—a statistical report.

Q. Is it a statement of the lands in detail?

A. Usually by section or quarter section.

Q. Did vou have such a one in this case?

A. After the purchase I think we had statistical estimates of the timber by government subdivisions, or sec-

346 tions.

Q. These reports were made by Mr. Eveleth in connection with that land, were they?

A. Yes, sir.

Q. Have vou these reports now in your possession?

A. I suppose we have.

Q. Where are your files?

A. In our office. They have been laid away for many years.

Q. Where you had those reports, was it your habit to transcribe the same into records or books in your office so as to show hom much timber you claimed to have on each

347 government sub.?

A. Not particularly, no. We used to make estimates and to have sheets—statistical recapitulations—group them up.

Q. Isn't it your general practice to transcribe from these sheets sent out by your estimator into some book kept in your office the information thus obtained, so that it can be kept for future reference?

A. Not in any particular books. We don't keep books that way. We have them in sheet form to give out to copy. We have tracts.

Q. Do you have tract books in your office showing combined land possessions?

348 A. We have tract books, but not estimates.

Q. The estimator turned in to you small books in which he has entered a description of each particular tract and the amount of timber estimated by him upon such tract, does he not? When you are considering the making of a purchase?

A. That is usual, I guess.

Q. Now do you keep these books or are they given back to the estimator?

A. We have usually kept them.

Q. Do you transcribe from these books the information thus obtained in any form, and if so, in what?

A. As previously stated, on sheets—what are called statistical sheets.

Q. What are those sheets used for?

A. For the purpose of having information as to the amount and quality of the timber.

Q. Do they also state the amount of land?

A. States the descriptions. The amount of land don't cut a figure with us; it was the amount of pine that cut the figure. 349

Q. Will you make an examination of your records and see if you can find either the books or statistical sheets of the character described above, which refer to these particular lands in controversy, and produce them this afternoon?

A. I will endeavor to do so.

Q. I understood you to say, Mr. Robinson, that there were no circumstances in the estimates or any information that you had respecting this land before you bought it (that is that you personally had) suggesting inaccuracy other than that which accompanied other purchases made in a similar manner; what do you mean by that? 350

A. We were buying and selling lands in our office at that time for ourselves and some for other parties and found inaccuracies in surveys frequently.

Q. As a matter of fact there was a very gross inaccuracy in this particular case, was there not?

A. We didn't know it at that time, at least I didn't know it at that time.

Q. But there was in fact?

A. There seems to have been.

Q. In fact there was no regular survey made, as we have already said?

A. That is a fact that I would not attempt to say; I have no knowledge of the fact. It has evidence of a very inefficient survey, if any. 351

ERWIN EVELETH, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, upon oral interrogatories propounded to him by Fred A. Robinson, solicitor for complainants, testified as follows:

Q. Mr. Eveleth, state your name, address, age and occupation?

A. Erwin Eveleth; Corunna, Michigan; age 57; occupation land-looker and estimator.

Q. How long have you been engaged in the business of examining and estimating lands?

A. Since 1866.

Q. Did you examine the lands purchased by Simon J. Murphy around and in the vicinity of Cedar Island Lake in T. 57 and 58 N. R. 17 W., St. Louis County, Minn., and when?

A. I did, in the spring and fall of 1883.

352 Q. About how much land did you examine and estimate that was purchased by him at that time?

A. There was like about 10,000 acres that was purchased that season.

Q. About how much that was purchased tributary and adjoining Cedar Island Lake, should you think?

A. About 4,000 acres.

Q. In locating the various lots, fractions and other descriptions upon what did you rely?

A. Upon the survey as we found it around the lake.

Q. Did you have a government plat?

A. I did, yes, sir; I went by that.

353 Q. Did you have any knowledge that there was any fraud or irregularity in the survey of the lands around Cedar Island Lake at the time you took the government plats and went to examine them?

A. I did not.

Q. Did you know at the time you looked the land that the fractions on Cedar Island Lake were larger than they appeared to be on the government plat?

A. Yes, I did. They were larger on the north side than they appeared to be on the government plat.

Q. Did such excess occasion you any surprise or suspicion of and fraud in the survey?

A. No, sir, it did not.

354 Q. Is it or is it not usual and common that fractions adjoining lakes and meanders of rivers are often greater or smaller than appears by government plat?

A. It is.

Q. Did you note any other apparent excess or shortages in the lands purchased by Mr. Murphy at that time?

A. I did in T. 58-17 on section 31.

Q. Does any other occur to you?

A. Well, when we were examining land in the fall south on section 9, there was some shortage in the land there.

Q. Were these instances of excess or shortages?

A. Shortages on that in T. 58-17; shortages in that on section 9, T. 57-17. There was a lake that was not put on the plat at all, but was put on as lands by the government, and we purchased them from the original owners.

Q. Did you, prior to the purchase being made by Mr. Murphy, include in your report to him or to Robinson & Flinn any such excess or shortages in these lands?

A. I did not because it occurs so often that we don't pay any attention to it at the time when I make the reports.

355

Q. When did you first hear of alleged fraud in connection with the survey of Town 57 N. R. 17 West?

A. I think some time in the fall or spring of 1891. I didn't ever know of any fraud until the settlers went in there that have gone on and made these claims now. It must have been about in 1892 or 1893, before I heard of any alleged fraud.

And upon Cross-Examination by Robert G. Evans, said witness testified as follows:

Q. Mr. Eveleth, how long have you been engaged in the business of estimator of pine lands?

A. From 1866 to the present time.

356

Q. Are you a surveyor?

A. No, I am not a practical surveyor.

Q. Do you understand how to find and run lines in woods?

A. Yes, I do.

Q. Without going into detailed surveying, you understand how to find corners of descriptions of lands in woods as you go through—that is necessary to your business?

A. Yes, sir.

Q. Do you take a surveyor along with you when you go to find these?

A. No, sir.

357

Q. What do you take?

A. A compass, and a plat.

Q. Then you find corners and run your lines.

A. Yes, sir.

Q. Now in making the estimate of the land in controversy in this suit did you pursue that course?

A. Yes, sir.

Q. You know what land is in controversy in this suit, do you not?

A. Yes, I think I do.

Q. Now, how did you find the land in question?

A. I went in on town line coming from the east and went to the lake, and when I came in from the east line we found the meander corners on the lake of section 2 and section 35. After that we didn't find anything until we crossed the lake and struck the town line north of the lake, although we looked around there for half a day trying to find some marks, but we didn't find any surveyor's lines until we struck the town line north of the lake. We could only find the corners on the town line.

Q. What corners?

358 A. Corners of 32 and 33 in T. 58 and of 3 and 4 in Town 57.

Q. And in the township north?

A. Town lines between two towns.

Q. Did you find any other markings or corners besides these two?

A. This is all I think I found; also the quarter post on that town line.

Q. Did you find a corner established in section 2 in Town 57 and section 35 in Town 58?

A. Yes, that was at the north-east corner of section 2. That would be the corner of 1 and 2, T 57-17, and 35 and 36, T 58-17.

359 Q. On the town line?

A. On the town line east of the lake. I think it was about half a mile after we crossed the quarter post that we struck the meander—a little over half a mile—I mean the meander as laid on the government plat.

Q. How far was it from the actual lake?

A. The meander would be right on the lake.

Q. Now, you say that you looked around when you got west of the lake in sections 3 and 4 for about half a day to find corners, didn't you?

A. Yes, to find lines.

Q. And you could not find anything?

A. No, sir.

360 Q. Then you went north and found a section corner?

A. Yes, sir.

Q. After you found section corners what did you do?

A. We had a government plat and we would have to take the proper lots. The lots ran from the lake up to the town line.

Q. Did you run from the town line down to the lake on these lot descriptions?

A. Yes, we did.

Q. Can you tell me how far it was from the corner of 3

and 4, in Town 57, and 33 and 34 in Town 58, south to the shore of the lake?

A. I think it was 3-4 of a mile; it may have been a little over that.

Q. Did you make any memorandum of your survey at that time?

A. Nothing except a note that it was a large lot, I didn't make any memorandum of it.

Q. Did you have the field notes with you of the government survey?

A. Only the plat, no field notes. 361

Q. Was anything noted on that plat to show you the length of the boundary lines?

A. No, sir, there was not.

Q. Was there something to show you the number of acres?

A. No, I didn't have the number of acres, only the number of the lots.

Q. You had a copy of the government plat?

A. Yes, but they didn't put that part on it.

Q. Who made it?

A. Mr. Cary was the Register, but I don't know who made the plat.

Q. Now, one of the lots claimed by the plaintiffs in this 362 suit is lot 8 in section 4; how did you find lot 8 in section 4?

A. We ran down from the quarter post over the town line and measured down 80 rods from the line, which would be a subdivision properly made from the line. This section is on the N. W. ¼ of section 4, this lot 8.. Then the parties we were to purchase from didn't own the N. W. ¼ of the N. E. ¼ and we paced from the line down the 80 rods and called the balance of it the lot. That would run to the lake. That would be a regular subdivision, 40 acres, which would be 80 rods wide.

Q. Well, you first found lot 1 in the N. E. ¼ of the N. E. ¼ of section 4, didn't you?

A. Yes, sir. 363

Q. And you ran side lines of that down to the lake?

A. Yes.

Q. And you estimated the timber in that?

A. Yes, sir.

Q. Ho far did you say that line extended, lot 1?

A. I think about 3-4 of mile on the west side of the lot.

Q. How far on the east line?

A. I think it was 80 to 100 rods, something like that.

Q. Wasn't it more than that?

Q. Right down the east on the east side a rods West of the West side a. yes.

PAGE CUT OFF

A. I don't think much more than that just there; it might have been a little more than that.

Because after you left that corner there you could not find the line running that way. The line angles.

I don't suppose there was a line run there, but I don't know. I found no signs of the original survey.

Q. When you got through with that lot 1, you then went 80 rods west of the township line and 80 rods south and commenced to run out that lot number 8?

A. Yes, we ran down 80 rods south from the town line.

364 Q. The same way as lot 1?

A. Yes, sir.

Q. And you ran down to the lake?

A. I don't remember whether we got down to the lake.

Q. Isn't it a matter of fact that that would not strike the lake running it on the south?

A. Well, I couldn't say whether we ran that clear down to the lake.

Q. Do you know how far?

A. I think something like 80 or 100 rods and then we angled across. I don't think we ran clear down to the lake at all.

Q. Assuming that you ran it down 100 rods, how many

365 acres would that contain?

A. About 50 acres. 100 rods, and 80 rods wide.

Q. Now how did you find the descriptions 1 and 2 in section 3?

A. Those we ran down on the line there and then paced south to find the descriptions.

Q. Did you go to the lake?

A. Yes. At the time we were there we could travel right on the lake. It was in winter and frozen up.

Q. You found nothing to mark the corners or lines of lots 1 and 2 in section 3, did you?

A. No, I found no marks whatever. We had to do that by pacing from where the meander corner came from the

366 lake, paced west, and then made the subdivisions in accordance with the pacing.

Q. Where did you commence to run lots 1 and 2 in section 3?

A. At the corner between 3 and 4.

Q. You ran south of the section line?

A. Because those lots all came from the town line to the lake.

Q. You ran to the lake?

A. Yes, sir. Paced across 80 rods and then north to —we didn't run north.

Q. You went with the actual meandering of the lake up to the town line?

A. Practically there were no meanders t oit. We took their town line and ran down, because the lots were all made right from the town line to the lake and we had no reason to subdivide those lots. We took all the land between the town line and the lake and called them the lots. I could not say how much land they contained.

Q. Did you go from the lake to the town line.

A. Yes.

Q. How far? 367

A. I could not say; about half a mile or something like that.

Q. Was the same method pursued in estimating the land in section 2?

A. Yes, sir.

Q. And the same lack of marking?

A. Well, we had an advantage there; we had the meander corner to start from on section 2 and had the line that ran east. Taht was all we had.

Q. Did you estimate the lots in 9 and 10 and 11?

A. Not then. I did in the fall, but then I just estimated some of the lands in section 10.

Q. Did you find any survey? 368

A. No government surveys. There have been some made by the men who located the lands. That is what we went by partly. I mean the men who entered the lands from the government.

Q. You found no traces of any government survey?

A. No, sir, I don't think so.

Q. Did you run those lots out practically in the same manner as you did those north of the lake.

A. Yes, only we went from meander section 2 line west far enough to come to the line between 2 and 3, and then ran west again in order to make that subdivision come.

Q. Do you know how much timber you estimated in lots 369 1 and 8 sections 3 and 4.

A. I could not tell without looking it up. I have a record of it.

Q. Have you got that record along with you?

A. No, sir.

Q. Did you turn it in to the plaintiffs.

A. Yes, sir, a copy of it.

Q. I will ask you the same question as to the timber in sections 2, 9, 10 and 11, did you keep a like record, made at the time?

A. Yes, sir. There was usually good timber on each, as estimated by me.

Q. What as the character of timber on these lands, Mr. Eveleth?

A. Pine, beech, maple and such timber as that. White pine and cedar, some tamarack and some spruce. I was estimating pine.

Q. What kind?

A. White or Norway.

Q. Can you state from recollection, either at the time
370 or as it has been refreshed, the amount of pine that you found on this land, as to whether it was heavily or sparcely timbered?

A. Some was heavily timbered, some was sparcely. It averaged very well.

Q. Taking the average there it might show more than a fair average of timber for that locality?

A. Yes, sir.

Q. Can you recollect how many million feet you found on the lands in township 57?

A. No, I could not now. That was about in 1883.

Q. It has been stated that you estimated, at the time you estimated the lands in 3 and 4, some 4,000 acres in
371 township 57 and 58 N. R. 17 W. and township 53 N. R. 14 W., and that this entire tract had about 43,000,000 feet upon it, can you state from recollection what proportion of this 43,000,000 feet was found in the lands in sections 2, 3 and 4 estimated by you at the time of that purchase?

A. No, sir, I could not without referring back to the minutes.

Q. When you made estimates of the lands in township 57 N. R. 17 W., who were they made for?

A. They were made for the plaintiffs in this suit.

Q. You sent them in written reports of your estimates, including the description of the lands gone over by you, did you not?

372 A. Yes, sir.

Q. Did these reports give in detail the various descriptions of land and the amount on each separate government subdivision?

A. I did, yes, sir.

Q. They were in the shape of a little book that you carried with you?

A. Well, I think I made the report to them on a different sheet than that.

Q. In what shape?

A. On sheets, I think.

Q. Have you seen those reports since you made them?
A. I don't think so.
Q. Have you the original memoranda with you from which you made these reports?
Q. I have not. I have them at home.
Q. If the copies transmitted by you to the plaintiffs can be found, are you willing that they may produce those originals?
A. As far as anything I know I think they can. I have not seen them for some time.

Q. Now, you say in answer to a question addressed to 373
you on the examination in chief that at the time you went over these lands in township 57, you thought the descriptions on the north side of the lake were larger than they should be.
A. Yes, I thought they were large lots, which we often find in government surveys.
Q. They were particularly large lots, were they not?
A. I don't know that they were larger than some I have found in government surveys.
Q. Well, what made you think they were large lots, Mr. Eveleth?
A. Well, the distance from the lake to the town line. 374
The lots run to the town line from the lake with the exception of lot 8.
Q. Well, you had heard, hadn't you, that there were pretty large lots out there?
A. No, I didn't hear any such thing. If I had, I wouldn't have spent half a day looking up lines. I supposed the survey was perfectly correct.
Q. Did you find any squatters or persons on there when you went there?
A. No.
Q. Who went with you there, Mr. Eveleth?
A. My brother as one, Mr. Palmer was one; I don't re-
member his first name; the last I heard of him, I think, he 375
was out in Oregon or California. My brother's name is Julius and he lives in Corunna, Mich. I had an Indian with me, I guess I had a couple of them with me.
Q. How long were you up there?
A. About 10 days at that time, in the 2 townships.
Q. At the time you ran the line south of the lake, how long were you there?
A. At the same time; that is the first time we were there, the time we made estimates on section 10.

Q. Did you make estimates on sections 9, 10 and 11 the first time?

A. No, I think just section 10.

Q. That was the Graff & Little purchase on section 10?

A. Yes.

Q. You found an absence of government survey?

A. Yes. I didn't find the government survey.

Q. How long were you there that time?

A. Well, that time about 10 days.

Q. When did you run lines in reference to that on the
376 balance of the lands in 9, 10 and 11, and 2, 3 and 4?

A. Yes.

Q. What land did you run the first time you were there?

A. We ran lands in section 2, section 3, and section 4, and sections 9 and 10. Those were the lands we ran out the first time we were there.

Q. When, with reference to the time you ran those lands, did you run the remainder of the lands in Town 57 for these plaintiffs?

A. I did it some time during that season. I wouldn't say whether it was in June or in the fall. I don't remember at what time they purchased those lands but it was
377 some time that season. These are the Graff & Little purchases. The other time I was there I think was in June and September.

Q. Well, Graff & Little's was along in the spring of 1883?

A. Yes, in March, 1883.

Q. Were you not there in 1882?

A. No, sir, I was not.

Q. How long after you made this estimate before the deal was closed?

A. I think it was some 30 days.

Q. How long after that before you went back and made
378 the examination of the remainder of the lands which the plaintiffs bought in Town 57?

A. I think it was from 2 to 5 months.

Q. You knew, when you went back the second time, Mr. Eveleth, that you wouldn't find any marks of the government survey, didn't you?

A. I didn't expect to find any around the lake when we couldn't find them at that time.

Q. What did you conclude from the fact that you did not find any section corners or quarter post or any other marks in the interior of Township 57, when you were there

making estimates, with reference to whether or not the survey was ever made?

A. I concluded the government was not very strict in making their acceptance of surveys.

Q. Well, doesn't all this evidence show to you that no actual survey had been made?

A. It would show me that corners had not been established; I could not say about surveys.

Q. Did you see evidence of lines running through the woods?

A. Yes, but I think they were made by the people settling the lands. These lines were south of the lake, I didn't see any north of the lake, but there was no necessity for that on account of the town line, because they had no reason to subdivide the lands. 379

Q. Well, if a government survey had been made, there would be?

A. They would go into the lake there quite a ways.

Q. You looked for quarter post along that section line north and south between section 4?

A. Yes—well, there was no line established; we looked where we thought a line should be and didn't find them, nor any markings north of the lake except section corners on the town line. 380

Q. What proportion of the timber on these lands in township 57 north of the lake was pine and what proportion was other timber that you did not estimate?

A. Well, I think that the pine was about 2-3 of the timber in area of the land.

Q. About what proportion would it be below on section 10?

A. I think that was about 3-4, pretty heavy timber.

Q. Can you tell about how many thousand feet per acre you estimated the pine on the land north of the lake to run?

A. I think so; about 8 to 10 thousand feet to the acre; I would not say positively. 381

Q. What is the usual amount of pine per acre where it is about the same class and character as that which you found upon this land?

A. From 8 to 10 thousand to the acre.

Q. The reports and communications which you made to the plaintiffs in this suit, or to any one of them, respecting this land, prior to, and at the time of, the purchase, were in writing, were they not?

A. Yes, sir.

And upon Re-Direct Examination by Mr.Fred A. Robinson, said witness testified as follows:

Q. You stated there was no acreage marked on the government plat of these towns that you had?

A. There was no acreage marked.

Q. When you applied, as a usual thing, to the land office for government plats, did you request them to include acreage?

A. I don't think that I did. Not as a rule.

Q. Why did you omit information relative to acreage?

382 A. They didn't put them on the plats.

Q. Was the acreage of any consequence to you? Was it land or timber that you were looking after.

A. It was timber.

Q. Was it for that reason that you omitted asking for acreage?

A. Yes, for one reason. I don't think I ever asked for acreage, unless it is some piece that I am particular to make a survey on.

Q. Were the corners, of the lots, quarter posts and meanders you found at and in the vicinity of this lake sufficient to establish the lots to your satisfaction?

383 A. Why yes, for my purposes they were, and by my having the plat.

Q. Did the fact that these lots were large enter into the conclusion in your recommending the purchase of this timebr.

A. It did not.

Q. In making your estimates, did you estimate closely each separate description by itself before recommending this purchase?

A. Yes, we intended to do that.

Q. When you stated that the land about the lake that you estimated, included in the purchase, contained from 8 to

384 10 thousand feet to the acre, did you mean all the land or that merely on sections 3 and 4?

A. I meant that on 3 and 4 and that on 9 and 10, that came from the Graff & Little people.

Q. In your judgement what proportion of all the excess land all around the lake contained pine timber?

A. I should think about 1-2 of the excess contained timber.

Q. Of that 1-2 what would the average be per acre?

A. It would be about 5,000 to the acre.

Adjourned to 2 o'clock P. M. of said day.

Taking of testimony was resumed at 2 o'clock P. M. of said twenty-seventh day of December, 1898.

Mr. Erwin Eveleth recalled and further cross-examined by Mr. Evans, testified as follows:

Q. Mr. Eveleth, I understood you to say that you obtained the copy of the government plat, which you used in making the examination of this land, from the land office at Duluth? 385

A. Yes, sir.

Q. What office?

A. The Register of the Land Office at Duluth.

Q. Do you remember who was Register at that time?

A. Mr. Cary of Duluth, J. M. I think.

Q. Judge Cary.

A. Yes.

Q. In examining the lands south of Cedar Island Lake in section 9, 10 and 11, you stated this morning that you found the lines in the same way as you did those north of the lake; did you run to the lake itself from the south boundaries of these various lots that you examined south of the lake? 386

A. Yes, sir.

Q. Can you recollect how far it was from the south line of lots 3 and 4 in section 9 to the actual boundary of the lake?

A. I cannot tell exactly, it was 15 years ago nearly, and I could not tell exactly what it was.

Q. It was quite a distance, wasn't it?

A. It was quite a long distance.

Q. Was it as much as a half a mile, or more? 387

A. I should not think it was. I could not say positively. We thought they were fair sized lots—some we thought were small.

Q. It was still further, wasn't it, in lot 2 of section 10?

A. I think it was, yes.

Q. It was about a mile to the lake from the south boundary of lot 2?

A. I couldn't tell. I shouldn't think it was quite as far as that. You can't tell exactly.

Q. It was in the neighborhood of a mile, wasn't it?

A. I could not tell whether it was a mile or half a mile now.

Q. You sent in, as I understand, a specific, statistical report o feach of these lots by specific descriptions.

A. Yes, I think that was the way I sent it in to them. I don't know whether they had the report fully before the purchase was made or not.

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388 TEMPLE E. DORR, a witness produced on behalf of said complainant, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, upon oral interrogatories propounded to him by Fred A. Robinson, solicitor for complainants, testified as follows:

Q. State your name, age, address and occupation?

A. Temple E. Dorr; 58 years old; lumberman; East Saginaw, Michigan.

Q. You own an interest in the lands purchased conjointly with Mr. Murphy by Messrs. Robinson & Flinn, do you not?

A. Yes.

389 Q. All the lands which they own with Mr. Murphy in Minnesota?

A. Yes, sir.

Q. What is that interest?

A. An undivided 1-6 interest.

Q. When did you purchase that interest of Mr. Murphy?

A. In 1890.

Q. You paid him for that interest the amount he had paid, with interest and taxes added, did you not?

A. Yes, sir.

Q. At the time of the purchase by you did you know any thing whatever of any fraud or irregularity in connection with the survey of this land?

390 A. No, sir.

Q. Did you know that there was any excess in the descriptions of land purchased by you around Cedar Island Lake?

A. Yes, sir.

Q. What had you in mind in making this purchase, what was the basis of the purchase.

A. It was for an investment.

Q. What particular value?

A. Nothing more than the timber, that is all.

Q. When did you first hear of any alleged fraud or inaccuracy in the survey about Cedar Island Lake?
A. The first I knew about it was when the squatters went there.
Q. You have been on these lands?
A. Yes, sir.

And upon Cross-Examination by Mr. Robert G. Evans, said witness testified as follows:

Q. Did you have an estimate made, Mr. Dorr, before you purchased? 391
A. All I went by was Mr. Murphy's estimate. I didn't.
Q. You took the estimate as sent in by Mr. Eveleth?
A. Yes, sir.
Q. Did you have a copy of that estimate?
A. Yes.
Q. Do you have it now?
A. Yes.
Q. With you.
A. No, sir.
Q. Did that estimate show in detail specifically the government lots and the amount of timber on each?
A. I think so.
Q. You have that now at your home, do you? 392
A. Yes.
Q. You haven't been on the land and examined it since, have you?
A. Only just to travel through it, not to make an examination of it, to pace it out or anything of that kind.
Q. For the purpose of examining the pine or timber?
A. Yes.
Q. What is the quality of the timber?
A. Quite fair quality of timber for that kind.
Q. A large proportion of it is white pine, is it not?
A. Yes, a larger proportion than Norway.
Q. How much would it run to the acre? 393
A. I never went to look at it in that way.
Q. It is a fair average stand of timber, isn't it?
A. I should think so.

MR. GEORGE O. ROBINSON, being recalled and further Cross-Examined by Mr. Robert G. Evans, testified as follows:

Q. Did you find the report made to you by Mr. Eveleth of the estimate which he made when examining these

lands prior to your purchase, and which I asked you to look for this morning?

A. Do you mean the estimate prior, or the report prior?

Q. The estimate.

A. Yes, I found these estimates.

Q. From these estimates can you tell me how much was estimated to be on lot 4 of section 10?

A. 100,000.

Q. On lot 3 of section 10?

A. 750,000.

394 Q. Lot 1 of section 10, according to the government plat?

A. 1,200,000.

Q. Lot 2 of section 10?

A. 1,000,000.

Q. Lot 4 of section 9?

A. 1,425,000.

Q. Lot 3 of section 9?

A. 350,000.

Q. Lot 2 of section 9?

A. 200,000.

Q. Lot 1 of section 9?

A. 400,000.

395 Q. Lots 1, 2 and 3 of section 2?

A. 150,000.

Q. Lot 1 of section 3?

A. 1,300,000.

Q. Lot 2 of section 3?

A. 2,000,000.

Q. Lot 1 of section 4?

A. 1,000,000.

We have these lots designated on our book as follows:

Lot 1 of section 3, T. 57 N. R. 17 W. as N. E. fl. ¼ of N. W. fl. ¼. Lot 2 of section 3, T. 57 N. R. 17 W. as W. fl. ½ of W.
396 fl. ½. Lot 1 of section 4, T. 57 N. R. 17 W. as E. fl. ½ of E. fl. ½. Lot 8 of section 4, T. 57 N. R. 17 W. as S. W. fl. ¼ of N. E. fl. ¼. Lot 1 of section 9, T. 57 N. R. 17 W. as N. W. fl. ¼ of N. W. fl. Lots 2 of section 9, T. 57 N. R. 17 W. as S. E. fl. ¼ of N. W. fl. ¼. Lot 3 of section 9, T. 57 N. R. 17 W. as N. W. fl. ¼ of S. E. fl. ¼. Lot 4 of section 10, T. 57 N. R. 17 W. as S. E. fl. ¼ of N. E. fl. ¼. Lot 1 of section 10, T. 57, N. R. 17 W. as N. E. fl. ¼ of N. W. fl. ¼. Lot 2 of section 10, T. 57 N. R. 17 W. as W. fl. ½ of N. W. fl. ¼. Lot 3 of section 10, T. 57 N. R. 17 W. as S. W. ¼ of N. E. fl.

¼. Lot 4 of section 10, T. 57 N. R. 17 W as S. E. ¼ of N. E. fl. ¼

And upon Re-Direct Examination by Mr. Fred A. Robinson said witness testified as follows:

Q. Were these statistical reports received by you prior to the closing of the purchase on the option you then held?

A. According to my recollection they were received subsequent to the purchase of the Graff & Little lands. 397

Q. On what did you rely on making the purchase of the Graff & Little tract?

A. On Mr. Eveleth's telegrams, which in brief stated the gross quantity of pine estimated on the entire Graff & Little tract, amounting to 43,000,000 million feet of good pine, which he thought was as good timber as we could get.

Q. Have you answered on cross-examination that the evidence showed an inefficient survey, if any, what real evidence have you that the survey is irregular?

A. Hearsay evidence, and in looking over the maps of re-surveys lately reported to have been made.

Q. What evidence have you that the survey was fraudu- 398 lent?

A. I have none whatever of any fraud in the original survey.

Q. In the tabulated statements of the woodsman's notes referred to in the cross-examination, is there any reference made to acreage?

A. There is not; our policy was to buy timber and not acres. We made no special count of the exact acreage.

And upon Re-Cross Examination by Mr. Robert G. Evans said witness testified as follows:

Q. Mr. Robinson, do you know when you did receive those reports from Mr. Eveleth?

A. I don't recollect the exact date, but to the best of my 399 recollection we received them after we had concluded the purchase of these lands.

Q. You received them before you made the purchase of the Nelson and Scott Griswold lands south of the lake, did you not?

A. I have no positive recollection of it, but I presume that we did.

Q. You say that you think that your information was obtained from telegrams sent by Mr. Eveleth to you after

his investigation of the lands; have you the telegrams received and which you referred to?

A. These are the telegrams. (Showing telegrams).

Q. Will you please read them to the notary and have them incorporated in your deposition?

A. (Witness reads telegrams as follows:)

Duluth, March 30th, 1883.

To Robinson & Flinn,

400 The Graff & Little tract will cut forty-three millions good pine and is the best trade that can be made up here. What will I tell them. The other tracts are not good.

ERWIN EVELETH.

Duluth, Minn., March 31, 1883.

To Robinson & Flinn,

Location good. Best pine I have seen up here. If you want timber, take this. There are other parties waiting for it. It is very cheap lands at the price.

ERWIN EVELTH.

401 Duluth, Minn., April 1, 1883.

To Robinson & Flinn,

Parties do not want to give extension as there are others that stand ready to pay cash without looking soon as our time is up and as we have 10 days after acceptance to close in. Can you not make it out. I think that if we were to pay some money so that they were satisfied they would give me time to go down and show you estimates which are forty-three million white pine 10 per cent uppers. Don't fail as it is the best trade we will be able to make here.

402 Answer.

ERWIN EVELTH.

I hereby certify, that the taking of the above deposition was by agreement of the counsel for the respective parties adjourned from the twenty-second day of December, A. D. 1898, at 10 o'clock A. M., to the twenty-seventh day of December, at 10 o'clock A. M., and that on said twenty-seventh day of December, A. D. 1898, the said witnesses were produced before me at my office, Room 43 Moffat Building, south-west corner of Fort and Griswold streets in the city

of Detroit, State of Michigan, and having been by me first duly sworn to tell the truth, the whole truth and nothing but the truth, were examined orally upon questions propounded to them by the solicitors for the respective parties, and that the said questions and answers of said witnesses thereto, were pursuant to stipulation of the counsel for the respective parties, taken down stenographically in my presence, and were afterwards written out by the stenographer so taking the same.

I further certify, that all objections to questions propounded to witnesses, and the answers thereto, other than as to the form of the questions, were, by agreement between the counsel for the respective parties, reserved, and may be made on the reading of this deposition at the hearing of said cause as fully, and with the same effect, as though made at the time and noted by me. 403

And I further certify, that the signatures by the respective witnesses to their respective depositions were waived by the solicitors for both parties.

I further certify, that the said depositions were taken pursuant to the notice hereto attached, marked Exhibit "A." 404

In witness whereof, I have hereunto set my hand and official seal at the city of Detroit in the County of Wayne, State of Michigan, this Fourth day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

ROBERT M. CHAMBERLAIN,
Notary Public, Wayne County, Michigan

(Notarial Seal.)

Notary's fees, ...	$ .30
Oaths	.30
108 folios at 20c.....	21.60
Copy	10.80
Postage	.16
	$32.86

405

Exhibit A.

United States Circuit Court
~~State of Minnesota, Fifth Division~~, District of Minnesota, Fifth Division
In Equity.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, Complainants,

vs.

P. H. Kirwan, as United States Surveyor General for the District of Minnesota, and Thomas H. Croswell, Defendants.

To ROBERT G. EVANS.

406 United States District Attorney for the District of Minnesota, and Solicitor for the Defendants above named.

Sir: You will please take notice that the depositions of Erwin Eveleth; George O. Robinson and Temple E. Dorr, witnesses for the complainants in the above entitled action, will be taken before Robert M. Chamberlain, a notary public, duly authorized by the laws of the State of Michigan to administer oaths therein, at his office at No. 43 Moffatt Building, south-west corner of Fort and Griswold streets in the City of Detroit, State of Michigan, on the 22nd day of December, A. D. 1898, at ten o'clock in the forenoon of that
407 day, and that said examination will be adjourned from day to day until the same is concluded; said deposition to be used upon the hearing of said action, and is taken pursuant to a stipulation entered into by the parties hereto.

Dated at Duluth, Minn., this 9th day of December, A. D. 1898.

M. H. STANFORD,
Solicitor for Complainants,
800 & 801 Torrey Bldg., Duluth, Minn.

Indorsed: Received and filed January 7 1899.

408 HENRY D. LANG, Clerk.

By Thos. H. Pressnell, Deputy.

United States of America.

Circuit Court of the United States for the District of Minnesota, Fifth Division, in Equity.

Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, Complainants,

vs.

P. H. Kirwan, as United States Surveyor General for the District of Minnesota, and Thomas H. Croswell, Defendants.

Depositions of witnesses taken before Harry H. Lamont, a notary public in and for the County of St. Louis and State 409
of Minnesota, at his office, room 800 Torrey building, in the City of Duluth, in said County of St. Louis, on the eleventh day of January, A. D. 1899, at 10 o'clock in the forenoon of that day, for use on the hearing of the above entitled cause on the part of the complainants, pursuant to the notice hereto annexed.

On the said eleventh day of January, A. D. 1899, the said complainants appeared by their solicitors, M. H. Stanford, and the said defendants by Robert G. Evans, United States District Attorney for the District of Minnesota, at 10 o'clock A. M. of said day, at the said place. It was agreed between the counsel for the respective parties that all objections to 410
questions propounded to witnesses, and the answers thereto, other than as to the form of the questions, are reserved and may be made on the reading of this deposition at the hearing of said cause as fully, and with the same effect, as though made at the time and noted by the officer taking the deposition, except as to documentary evidence. As to that, all objections to its authentication or identification must be made at the time it is offered. It is stipulated and agreed by the solicitors for the respective parties that the testimony of the witnesses may be taken down by stenographer in short-hand and afterwards written out by him, and that the signatures of the several witnesses to their respective depositions are hereby waived. 411

PHILIP M. GRAFF, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, upon oral interrogatories propounded to him by M. H. Stanford, solicitor for complainants, testified as follows:

Q. I will ask you where you reside, Mr. Graff?

A. Well, you might say that I reside here in Duluth, altho' I have a homestead.

Q. How long have you resided in St. Louis County, Minnesota?

A. I came here in 1879 or 1880 and have been more or less a resident here ever since, as I said before, I have a homestead.

Q. Do you know Mr. Simon J. Murphy; Mr. George O. Robinson; Mr. Elisha H. Flinn and Mr. Temple E. Dorr?

A. I am well acquainted with Mr. Murphy; Mr. Dorr and Mr. Robinson, I don't know as I know them so very well.

412 Q. That is Mr. Dorr of Saginaw?

A. Yes, sir.

Q. How long have you known Mr. Murphy?

A. I have known him best of all, I met him in 1882 I think.

Q. What transactions, if any, did you have with Mr. Murphy in 1882?

A. I sold him quite a lot of timber in St. Louis County.

Q. Did you sell him anything else besides timber?

A. No, sir.

Q. I guess you don't exactly understand what I mean; did you sell him any timber lands?

413 A. We sold him some timber, some lands with timber on, we always figure timber lands by the estimate.

Q. Do you ~~know~~ remember where the lands were located, can you give a description of them?

A. I don't know as I could locate them specifically; they were in St. Louis County; the deed was made, I think, in the spring of 1883, that is the only transaction that we had with Mr. Murphy, Mr. Simon J. Murphy.

Q. Those were the only lands that you ever conveyed to him?

A. Yes sir.

Q. Who united in this conveyance with you?

414 A. Mr. Little and wife and my wife and brother.

Q. Do you know the location of that land with relation to Ely Lake; do you know if any of it bordered on the lake?

A. Yes, sir, because we figured on that relation with regard to banking logs.

Q. Who did you buy that land of?

(Question withdrawn.)

Q. What was the basis of your sale of this land around Ely Lake that you sold to Simon J. Murphy in 1883; what was the basis of the purchase; what was the consideration?

A. The basis of purchase was on the estimate of timber, it was sold on estimate.

Q. As to this, were the lots bordering on Lake according to the Government plat?

A. We sold them as we received them, according to the government plat.

Q. What was the limits of estimate on each parcel as to this boundary?

A. The timber was estimated on the boundary as given by the government plat.

Q. As running to the actual waters of the lake? 415

A. Yes, sir.

Q. At the time you sold this land to Simon J. Murphy, had you ever heard of any irregularity or fraud in the surveying of the land in that township?

A. No, sir, I never heard of anything of that kind.

Q. When did you first hear of anything of that character?

A. When suit was commenced with the settlers, what I read about it in the papers of the settlers going in trying to set aside the survey and have it re-surveyed.

Q. How long ago was that?

A. Oh, that was—I don't remember the exact date; I 416
had no reason to mark the date; it was a few years ago, not over two or three I suppose.

Q. What personal examination did you make as to this title?

A. We had it looked up to see that there was a patent from the government or that they had filed.

Q. What as to the boundaries of the land?

A. We went by the government survey.

Q. Or the plat?

A. The survey and the plat.

Q. State whether or not you made a personal examination of the plat in the land office?

A. Yes, sir, I did. 417

And upon Cross-Examination by Mr. Robert G. Evans, said witness testified as follows:

Q. Who was connected with you, Mr. Graff, in making that purchase?

A. Graff, Little & Company.

Q. Who comprised that firm?

Q. At that time E. D. Graff, Daniel E. Little and myself, afterwards there were changes in the firm.

Q. What business were you in?

A. In the lumbering business.
Q. Buying pine lands and lumbering?
A. Yes, and selling timber lands.
Q. You bought from the estimates you say?
A. Yes, sir; you know the value of the land was in the estimate of the timber, that was the way about all the lands were bought.
Q. You had estimates before you bought?
A. Yes, sir.
Q. You had estimates of this particular land?
418 A. Yes, sir.
Q. Who did you have the estimates made by?
A. By C. B. Chandler.
Q. He was an expert cruiser or woodsman?
A. Yes, sir; he was—Well he was an estimator.
Q. He would go on lands and run lines and make estimate of the timber?
A. I don't know that he would run lines.
Q. Mr. Chandler surveyed for you in making this purchase?
A. Yes, sir, he made an estimate.
Q. Did he go on the land?
A. Yes, sir.
419 Q. Did he make an estimate of each tract?
A. Yes, sir.
Q. Did he take the government plat with him?
A. Yes, sir.
Q. His duty and business, in making this estimate, was to go over the identical lands covered by the plat that you intended to purchase, that was his duty?
A. Yes, sir.
A. ~~No, he was not a surveyor, he was an estimator~~.
Q. Was he a surveyor himself?
A. No, he was not a surveyor, he was an estimator.
Q. Would he take a surveyor with him?
420 A. I don't know if he did, he generally took a man with him.
Q. Was he able to find corners and run lines himself; was it not necessary for him to be able to find the corners?
A. Yes, unless he took a man with him.
Q. He either had to have a surveyor with him or run lines himself?
A. I suppose so. He was a brother in law of Mr. Little.
Q. Most generally he had some one with him.
A. I can't say exactly. I guess he had some one.

Q. Did he discover by making examination of the lands its condition, points of survey &c.?

A. Yes, sir.

Q. After Mr. Chandler made an examination of the lands and made an estimate I suppose he reported the result of the examination to you?

A. He reported the amount of timber on the land and its proximity to the water.

Q. Would he report that separately and specifically as to each tract?

A. Yes, sir. 421

Q. Would he take each general subdivision that was on the plat and report what he found in that subdivision?

A. Yes, sir.

Q. Were these reports in writing?

A. Each report was sent in, yes, sir.

Q. Did he have a plat book?

A. Yes, sir, he would mark in there the description of the pine and tell how much timber there was, how much pine, how much Norway, in that way he would make ~~an~~ the estimate.

Q. I suppose, in making this sale, you compared the estimates of timber as reported to you by Mr. Chandler in each specific with the estimate made by Mr. Eveleth, who 422 made the former report?

A. I never saw Mr. Eveleth's estimate; he made an estimate, he agreed to purchase; we figured on the estimate here knowing Mr. Chandler had made the estimate low we figured a little higher than his estimate and they confirmed the estimate.

Q. You sold in that way?

A. Yes, sir.

Q. Have you the reports made by Mr. Chandler?

A. Everything of that kind the firm has gone out of business and I have never thought of the matter since until Mr. Stanford spoke to me.

Q. You bought largely of homesteaders? 423

A. Yes of homesteaders and through Mr. Brandenburg and some we bought as offered land, included in this transfer.

Q. Did you ever have any experience yourself in estimating lands?

A. Yes, sir.

Q. In order to make a correct estimate when you go upon a tract or tracts of land it is necessary for you to find the section and other corners and run off the lines which

make the division you estimate, or do you get them in some other way?

A. You have got to have your corners in order to do any work; then you can run your lines to the corner or to the water's edge as the plat would show.

Q. Suppose it didn't show any interior marking at all, what would you do then?

A. You have got to get a line from some place and start and pace out until you get to a corner to start from, that is the customary way of doing.

424 Q. I think that you stated that Mr. Chandler was a brother-in-law of your partner?

A. Yes, sir.

Upon reading the foregoing testimony to the witness, Philip M. Graff, by me, the said Notary Public, the said witness wished to make the following explanations:

Question on fourth line from bottom of page 2 of Transcript, reading as follows:

Q. Do you know Mr. Simon J. Murphy; Mr. George O. Robinson; Mr. Elisha H. Flinn and Mr. Temple E. Dorr?

Witness desires to make his answer as follows:

425 A. I am well acquainted with Mr. Murphy, Mr. Dorr and Mr. Robinson, I don't know as I know Mr. Flinn at all.

On last line of page 4 to read as follows:

A. When suit was commenced by the settlers, that I read

Seventh line from bottom of page 6 witness undertsood the question to read as follows:

Q. Mr. Chandlers estimated for you in making this purchase?

Eighth line from bottom of page 7 to the question:

Q. Did he discover by making examination of the lands its condition, points of survey &c.?

426 Witness wishes the answer to read (as he did not understand the question then propounded):

A. As to its actual condition, he made no report of any irregularity in the survey; he reported its proximity to the lake and the amount of timber on it, quality &c."

Second line from bottom of 8th page witness wishes answer to read as follows:

A. "Everything of that kind has been destroyed the firm has gone out of business and I have never thought of the matter since until Mr. Stanford spoke to me."

MERRITT S. COOK, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, upon oral interrogatories propounded to him by M. H. Stanford, solicitor for complainants, testified as follows:

Q. Mr. Cook you have given us your full name?
A. Yes, sir.
Q. Where do you reside?
A. In Duluth.
Q. What business are you engaged in?
A. Surveyor and civil engineer. 427
Q. How long have you been engaged in that business?
A. About thirty years.
Q. About thirty years?
A. Yes, sir.
Q. What exeperience, if any, have you had in finding lost section corners and in surveying in territory where the survey is defective?
A. I have had considerable experience. In Michigan and in this state.
Q. Have you held any official position in this state, either federal or state?
A. Deputy United States Surveyor. 428
Q. How long have you been such in this state?
A. Five years, I guess.
Q. State whether or not you are acquainted with any portion of Township 57-17 West, in this County?
A. Yes, sir, I have been there.
Q. And you know Ely Lake?
A. Yes, sir.
Q. Whereabouts is Ely Lake situated in that Township?
A. In the Northern part.

BY MR. ROBERT G. EVANS.

Q. By Ely Lake you mean Cedar Island Lake?
A. Yes, sir. 429

DIRECT EXAMINATION RESUMED BY MR. STANFORD.

Paper handed to the witness by Mr. Stanford, which is marked by the reporter Complainants' Exhibit "A."

Q. I want you to examine that and state whether or not you ever saw it before?
A. Yes, sir.
Q. What is it?

A. It is supposed to be a map of that township.

Q. Who made it?

A. I made it.

Q. State the circumstances under which you made that plat?

A. I made this map at your, Mr. Stanford's request about two years ago.

Q. State whether or not you made a map which has been used in this case?

A. I did, yes sir, one used in this case.

430 Q. Attached to the original bill of complaint in this action?

A. Yes, sir.

Q. This map here, what relation does it bear to the one that you made at that time?

A. It is the same, not that particular one.

Q. Not this particular one?

A. No, but it is the same map, a copy of it. I made duplicates of it, there were three supposed to be all alike.

Q. Then that is intended to be a copy, it was made at the same time as the map which is attached to the bill of complaint in this action?

431 A. Yes, sir.

Q. You knew that at that time they were substantially copies?

A. Yes, sir.

Q. You may state whether or not the location of Ely Lake is delineated on that map, Exhibit "A" correctly? State hether or ot that is a correct delieation of the location of the actual waters of Ely Lake as you know it?

A. Yes, sir, that is correct as near as I could make it according to the knowledge I had.

Q. State waht knowledge you had when you made that survey?

A. At that time I had surveyed the South west arm of
432 the water, that is what you mean by the lake, and since that I have surveyed some more of the west boundaries of the lake substantially the same as shown in this map.

Q. State what methods and plans you pursued in making this map?

A. In making this map of the town. I referred to the notes of the Patton survey made in 1893.

Q. State whether that is the only county survey that has ever been made of this township?

A. I think it is.

Q. Go on and state all the information you had at hand at that time and the methods you pursued in drafting this plat?

A. I made part of the township, that is of the boundaries, from Patton's notes and the interior lines I computed and laid down on the map in accordance with the old survey notes and plat.

Q. The old survey, what do you mean by that?

A. The United tEates Survey notes, except that the meander line was made according to the old survey.

Q. When you speak of the meander line, what do you 433
mean by that?

A. That is according to the old survey.

Q. The old Government survey?

A. Yes, but the water, the lake that is put in from personal information and what I got from other maps.

Q. In laying out the actual waters of the lake on the plat how are you able to say that you laid it out correctly on the plat?

A. I surveyed from the North boundary and reached the nearest section corner, 4, 5, 8 and 9 and triangulated the south west arm of the lake and made some other surveys and the east part of the lake I copied from the best maps I 434
could procure with regard to the location of the waters.

Q. In saying that you start from the section corner of 4, 5, 8 and 9, what section corner do you refer to, the section corner established by whom?

A. Established by the Patton survey, the survey ordered by the County when Patton was County Surveyor.

Q. Will you state what measurements you made besides those you have already stated, if any?

A. I surveyed the county road two different times; ran a line down to the lake and triangulated and measured up and got a map of the south west arm of the lake. The next year I re-surveyed the road and made some other measurements to the lake around the south part, located St. Mary's 435
Lake.

Q. Where is the county road located on that map?

A. There is one county road on a part of the northern boundary.

Q. Of the township?

A. Yes, the township; and then there is a county road from the northern quarter post of 5 and runs south east through section 5 and 9 into section 16 around the head of the lake, the south west shore of the lake.

Q. You may state Mr. Cook which is the North boundary of the township on that plat?

A. It is a dark line, that heavy line (indicating on map).

Q. What is that red line?

A. That represents the random line run by the County Surveyor when they re-surveyed the township.

Q. Where, on that plat, is the south east corner of section five, as established by the county survey?

A. It is the intersection of the dark lines, the south side of five, the line between four and five, the intersection of the
436 dark lines (indicating on paper).

BY MR. ROBERT G. EVANS.

Q. The solid lines?

A. Yes, sir.

DIRECT EXAMINATION RESUMED BY MR. STANFORD.

Paper marked Complainants' Exhibit "B" offered in evidence and handed to witness to examine. (See page 71)

Q. Please examine that Mr. Cook. I ask you if that represents correctly the location of sections 2, 3, 4, 9, 10 and
437 11, township 57-17?

A. Well, I don't think it does.

Q. In what respect is it not correct?

A. In the first place the map of the four sections is straight and regular as it would be on ~~any~~ a general plan or any plat of any township in the state, it is just the plan that don't represent the actual sections where they are.

Q. Why is it otherwise not correct?

A. Well, the lake is too for north and too far east.

Q. What is the difference in the methods pursued in delineating the lake and the section corners in Complainants' Exhibit "A" and this paper, Exhibit "B" which you
438 have in your hand?

A. Well, the map, Exhibit "A" is made from actual survey from the actual and interior section corners so far as they are established. Exhibit "B" is an imaginary line I should say without any regard to actual location.

Q. How are the interior corners in Exhibit "A," how are they located, on what plan?

A. The nearest corner 4, 5, 8 and 9 in Exhibit "A" was located by the County Surveyor.

Q. In what manner?

A. They first surveyed around the Township and then

ran interior lines across the township and located corners by intersections of lines after correcting by proportionate distances each way.

Q. ~~What is there about the~~

Q. What is there about the— What is there in that territory, Township 57-17 which makes it different from a Township in which the sections are all square?

A. I never saw a case of that kind.

Q. You never saw a case of that kind, where they were square?

A. No, sir. 439

Q. What is there peculiar with reference to that Township 57-17, that is different from other Townships where the survey is substantially correct?

A. What makes this township more difficult to survey, in the first place is the irregular boundary, the North boundary being very irregular in courses and especially difficult because there are no interior corners set by the original survey except one.

Q. Where is that?

A. The North west of section thirty-six, which was established under the old survey. 440

Q. You say that the County Surveyor in making the survey first ran exterior lines of the Township and then subdivided the interior lines; what methods did he use in subdividing the interior sections, subdividing the Township into sections?

A. He established two section corners, 4, 5, 8 and 9 and 5, 6, 7 and 8. In order to do that he ran two interior lines across the Tonship from the corenr of 5 and 6 on the North boundary to the corner of 31 and 32 on the South boundary; also another line across the Township section 4 and 5 on the North boundary to the corner between 32 and 33 on the South boundary and then he ran another line from the corner of 6 and 7 on the West boundary to the corner between 1 and 12 on the East boundary and then from the field notes he corrected the intersections so as to make the different section lines correspond as nearly as possible with the old survey notes. 441

Q. What is the peculiarity of that Township in surveying the territory inclosed within its boundary that makes its lines so irregular in addition to the irregularity of the Northern boundary of the Township?

A. That is the worst—the East, South and West boundaries are quite regular.

Q. How about the distance between the North and South boundary of the Township?

A. The extreme distance North and South would be considerable overplus.

Q. What is done with that overplus in that plat Exhibit "A"?

A. It is divided proportionately according to the old survey.

442 Q. Between what?

A. Well, each section is supposed to be equal.

Q. Now, in this Exhibit?

A. The North and South lines through the fractional sections would vary according to the old plat.

Q. Take Exhibit "B," how—what method pursued would produce such a plat as that of the actual waters of Ely Lake?

A. I couldn't say; the lines all appear to be straight and regular and they probably were governed by some corner, some supposed corner, in locating the lake; I have an idea what it was but I can't tell for certain, just judge from
443 appearances.

Q. In making the survey with all surplus territory in the North tier of sections?

A. Yes, the section corner on the south side of the lake.

Q. Would that produce such a plat as that?

A. In that case it would be too far South and the distance from there to the lake would be too large and a plat on that plan would show the lake to be too far north.

Q. Showing the same area existing on that plat?

A. Yes, sir.

Q. How about the East and West measurements?

A. If the corners were too far West and they referred to them in making the plat of the lake it would show the
444 lake to be too far East.

Q. Cannot you say from your examination of the various field notes and your field notes the methods which were pursued by the party making that plat?

A. I think the lake was located with reference to a corner supposed to be the North east corner of section 16.

Q. How much out of the way is that corner of section 16? in that plat Exhibit "B"?

A. It is hard to tell.

Q. Well, approximately?

A. I know about what the variation is between the true corner and this which I suppose was used in locating the lake. I can't tell who made this map and I don't know what methods they took.

Q. Can you by an examination of that map state approximately how far East from the North west corner of Section 9, as designated on this plat?

A. That is compared with the map I should say about fifty rods.

Q. About fifty rods?

A. Yes, sir. 445

Q. Too far East?

A. Yes, as near as I could tell.

Q. How much too far North?

A. About the same distance.

And upon Cross-Examination by Mr. Robert G. Evans said witness testified as follows:

Q. Mr. Cook, did I understand you to say that you are now Deputy United States Surveyor?

A. Yes, sir.

Q. You hold a commission from the Surveyor General?

A. Yes, sir. 446

Q. Do you hold it at this time?

A. Yes, sir.

Q. When was it issued?

A. About five years ago.

Q. How long was it to continue?

A. I don't know.

Q. Have you done any work for the United States?

A. Yes, sir.

Q. When?

A. In 1893.

Q. Have you not done any since?

A. No, sir.

Q. As a matter of fact this commission is issued for a 447 specific job of work and expires when you get through with the work; you have none now?

A. My commission don't read that way.

Q. Have you got it with you?

A. No, sir.

Q. You got it from the Surveyor General of this State?

A. Yes, sir.

Q. Of the District?

A. Yes, sir, Compton.

Q. You have done no work since 1893?
Q. No, sir; not for the Federal Government.
Q. Do you know who made this plat Exhibit "B"?
A. No, sir.
Q. How are the actual boundaries of the lake designated on Complainants' Exhibit "A," on the map by you?
A. The lake itself?
Q. Yes, how is it designated?
A. By irregular red lines.
Q. By irregular red lines?
448 A. Yes, sir.
Q. What do the dotted black lines outside mean—which are marked meander line?
A. That represents the meander line according to the old survey notes.
Q. According to the Howe survey?
A. Yes, sir.
Q. The red lines inside of it are the actual boundary of the lake as located by you?
A. Yes, sir.
Q. You say that you made this plat, Exhibit "A," by an actual survey and aided by the notes of Mr. Patton and such information as you could obtain from the government
449 plat?
A. Yes, sir.
Q. You found no interior marking of any description whatever as the result of the Government survey made by Howe? You found one corner in section 36?
A. I didn't find that myself, I had been told it was there.
Q. Oh then, on the South east corner you didn't find that yourself but you have been told it was there?
A. Yes, sir.
Q. Your testimony as to that is what you have heard from others?
450 A. Yes, sir.
Q. Did you find the corners on the North line of the Township between sections 3 and 4 and 5?
A. I have been on these corners.
Q. You have been there?
A. Yes, sir.
Q. Did you find those corners when you made this survey which is represented by Exhibit "A"?
A. I located them by the County Surveyor's notes.
Q. And subsequently you say your actual survey was made on the ground?

A. Yes, sir.
Q. So you had to have some data to run your lines?
A. Yes, sir.
Q. You got it from what?
A. The corner on the North boundary re-located by the County Surveyor.
Q. Did you run those lines South from the North corner to the corner of the South boundary of the Township?
A. I did not, no sir.
Q. You extended them on your plat?
A. Yes, sir. 451
Q. To the corner as established on the South boundary?
Q. That you got from field notes?
A. Yes, sir.
Q. Was it made before or after you made yours?
A. Before.
Q. How long before?
A. It was made in the spring of 1893.
Q. Mr. Cook did you find the section corners established on the East and West lines of Township 57?
A. The interior corners?
Q. Yes.
A. I have seen some of them. 452
Q. They are established?
A. Yes, sir.
Q. By the Patton survey?
A. I just observed them.
Q. Who made them?
A. Part were located by the old Howe survey.
Q. Were there any corners?
A. I found bearing trees standing.
Q. Did you find them?
A. I didn't look for any old bearing trees of the original survey because they were cut down in construction of the County road.
Q. Did you find any Government marks of any kind, 453 character or description on any of the interior lines of that Township?
A. No, sir.
Q. As far as appeared none ever had been placed there?
A. That is the supposition.
Q. You couldn't find any?
A. No, sir.
Q. You never saw any sign of any old survey?
A. No, sir.

Q. And can you tell the distances from the section corner as located by the Howe survey between sections 3 and 4? down to the actual boundary of the lake from your map, and in answering this question state what letter or figure on Exhibit "A" represents the section corner I have referred to on the Township line?

A. Letter "D."

Q. That represents it?

A. Yes, sir.

Q. Can you tell the distance from the letter "D" to the
454 actual boundary of the lake as located by you?

A. I can't tell exactly, but it is over a mile; counting the overplus it is probably twenty rods over a mile.

Q. Twenty rods over a mile?

A. Yes, sir, counting the overplus.

Q. How much is the overplus?

A. According to the survey it is about fourteen rods.

Q. About fourteen rods?

A. Yes, sir.

Q. Without the overplus it would be over a mile, without taking that into consideration at all?

A. The actual distance would be the same.

Q. You said it was about a mile and about twenty rods,
455 if that overplus did not exist it would be over a mile, wouldn't it?

A. I should say so.

Q. Can you state how many acres according to your plat, approximately, you find on what was known as Government lot 1, in section 4, according to the original Howe plat?

A. I can't tell.

Q. Can't you estimate from this plat, approximately?

A. Lot 1 to the meander boundary?

Q. No, to the actual lake?

A. It depends on the riparian boundary.

Q. But assuming that it ran to the actual lake?

456 A. It would be about 160 acres.

Q. It would be about 160 acres according to your plat, assuming that it ran to the actual waters of the lake?

A. Yes, counting eighty rods wide it would be 160 acres.

Q. Can you tell approximately how many acres there would be in lot 8, according to the Howe survey, assuming that the south boundary of that lot was the actual boundary of the lake?

A. Probably, if it went clear to the lake—it is designated as 27 acres.

Q. Yes, on the Howe plat it is designated as 27 acres, can you tell how many acres there would be?

A. Probably 140 acres, about that.

Q. Can you state the scale upon which this plat "A" is drawn?

A. I think—I don't remember.

Q. I don't think it shows on here?

Rule was handed to witness and he proceeded to ascertain the scale.

A. It is 40 chains to the inch, two inches to the mile.

Q. I will ask you, in running them as you did run them 457
on your plat, how many acres there would be?

A. That would be pretty hard to estimate.

Q. Would there be any material difference?

A. Oh, yes.

Q. Not many, would there?

A. Lot 1 run the way I have it would be about 140 acres.

Q. Lot 8 would be run about how much?

A. Lot 8 would be about 70 acres.

Q. Now, when you speak of it being less, the amount of land in each of these lots being less, the way you would run the lines, you mean the arbitrary division you made of the lines, you mean the arbitrary division you made of the 458
surplus land between the actual line of the lake and the meander line between the various lots and subdivisions outside of the meander line, do you not?

A. I mean the whole lot as marked on the plat, including the frontage.

Q. You made that as an arbitrary division, not as a rule of any government survey?

A. I can tell it is a rule used in subdividing.

Q. According to your idea of subdividing this riparian territory, what lines indicate the division you made in that way? abutting against the meander line of the lake as laid down in the Howe survey?

459

A. The dotted red lines converging towards the lake.

Q. These are the continuations of the side lines of the lots running from the North, East, West and South boundaries of the Town as you laid them?

A. Yes, sir.

Q. Now, let me direct your attention to lot 6 of the survey as originally made in section 6 and I will ask you to state how approximately you would find in that lot 6, if extended to the actual boundary of the lake—I meant lot 6 in section 4—suppose that lines extended straight to the

actual boundary of the lake, how many acres approximately —supposing the North and South boundary of lot 6 were extended to the lake, about how many acres would be in that lot?

A. It would extend across the other.

Q. Yes, I know that—suppose they were extended?

A. The North side of lot 6 and the south side of lot 6, if extended easterly to the actual water's edge would be a mile and a quarter across the frontage of the others.

Q. Nearly two hundred acres?

460 A. Yes, sir.

Q. Extended the way you extended to the lake by the dotted lines, how much would there be?

A. About seventy acres.

Q. Now, Mr. Cook, the same excess conforming to the actual boundaries of the lake would be the same if extended as I have said?

A. On the South side they would be shorter.

Q. What, less than the other way?

A. Yes.

Q. Now, in going to the lake with the extension lines of 1 and 8 in section 4 you would have to cross the actual di-
461 vision line or section line between sections 6 and 7, 5 and 8 and 4 and 9, is that right?

A. According to the old survey there would be no section lines.

Q. As a matter of fact in a survey made by you it would cross the section lines?

A. I would disregard the section lines.

Q. It would cross the section lines?

A. Yes, if the section lines were there.

Q. What does this letter "Y," on the west line of Town. 57, as shown in your plat, represent?

A. The section corner between 6 and 7 on the West boun-
ary.

462 Q. The section corner on the Township line between six and seven, you say?

A. Yes.

Q. That would be the North west corner of seven and the south west corner of six?

A. Yes, sir.

Q. The west corner of this (indicating).

A. Yes.

Q. What does the letter "H" on the East line of the Township reperesent?

A. The section corner between 1 and 12 on the East line of the Township.

Q. Suppose you draw a line from "Y" to "H" which would be the dividing line between the tiers of sections 1 to 6 and 7 to 12 would not the intersection of these lines that you run to the lake from lots 1 and 8 across that line.

A. What line do you refer to, section line or air line?

Q. Section line?

A. It would cross it on that part instead of the meander boundary. (Indicating.)

Q. You mean the old meander boundary? 463

A. Yes.

Q. That is the extension of the lines of the lots South or Southerly from the old meander line would cross the section line?

A. It would cross that line but would not clear that section line (indicating).

Q. Wouldn't it cross that line (indicating)?

A. Certainly, it would cross that imaginary line.

Q. It would cross the quarter and eighth lines of sections 4 and 3 would it not, if laid out?

A. If there was any line there it would.

Q. If surveyed as it should be there would be lines there, would there not? 464

A. I don't think there would.

Q. Don't you mark lines on the Government surveys?

A. We don't continue the old lines inside the meander lines, the old lines are not continued.

Q. But if they were continued as they should have been across the land they would have been marked on it?

A. If it had been a correct survey.

Q. If an accurate survey, the extended lines of lots 1 and 8 that I have been talking about would cross these quarter and eighth lines, would not they?

A. If the original survey was correct.

Q. And if a correct survey was now made it would be the case, would it not? 465

A. There would be two methods.

Q. Without regard to the conditions as they exist on account of the old survey but if a correct survey was made as it should have been made originally, if there never had been any survey made at all?

A. Under such conditions they would have to run to the lake and show the lake to be in its proper location.

Q. And these government lot lines would have to cross these quarter lines? (Indicating.)

A. In that case we would not have those lines.

Q. Do you have the field notes of the survey made by you?

A. Yes, sir.

Q. These field notes show the section corners on North, South, East and West of Township 57 and their location, do they?

A. Yes, sir.

Q. Do you have them here in the City?

A. They are the County Surveyor's notes.

466 Q. Did you go along the North line of the Township from "D" to "E" and "F"?

A. Not across it.

Q. There never was any corner or any mark on that line by the original Howe survey east of "D"?

A. I think all except the north side of section 3; not from "D" entierly to "E" from "D" down to the meander line.

Q. By the Howe survey. It was jumped?

Q. Do you mean by that line from "D" down to the meander line?

A. Yes, sir.

467 Q. From the examination you made of this, of that North boundary line, how would you say the line which is marked "M. C." on the North east boundary of the lake was established—that is this line from "D" to "M. C."?

A. That part was established by the County Surveyor.

Q. Was drawn as a straight line on the Howe plat?

A. East to the lake.

Q. I mean from "D" to "M. C."?

A. That was part of the county survey.

Q. That is an imaginary line he drew across there?

A. No, he drew it straight, but we never knew about that line until the county surveyor was in there.

Q. As platted on the plat made by Mr. Howe it was 468 simply a straight line, the plat made from the notes he turned in was made in a straight line.

A. Yes, sir.

Q. You spoke of a corner between 4 and 5 and 8 and 9 as being established by the Patton survey?

A. Yes, sir.

Q Did you accept it?

A. I always worked from it.

Q. Then you accepted it?

A. Yes, sir.

Q. It is represented in plat "A" by the intersection of the dark lines between the sections?
A. Yes, sir.
Q. You will note in Exhibit "A" a dark line from "D" to "Q" "D" on the northern line of the township and "Q" on the south line of the township, how was it established?
A. That line is computed from the Patton survey, the courses here and here and the distances here. (Indicating).
Q. This is the Nelson line? (designating on plat.)
A. The distance between those two letters.
Q. The distance between "D" and "Q"? 469
A. Was computed to the outside boundaries of the township.
Q. That was on data from field notes furnished by Patton?
A. Yes, sir.
BY MR. STANFORD.
Q. The Patton survey is really the county survey?
A. Yes, sir.

CROSS-EXAMINATION RESUMED.

Q. This Nelson survey marked on the dotted lines through the inside of the Township, that has nothing to do 470 with this plat?
A. I never used it at all, just looked at it.
Q. What was it.
A. It was run by surveyors in the employ of the Nelson Lumber Company some time ago and that survey I think was the basis for this other map.
BY MR. STANFORD.
(Q. What map was that?
A. Exhibit "B.")
Q. These red dotted lines which start out from each lot or subdivision point on the meander line as laid out in the government plat and converge towards the lake are the boundary lines of the lots as you think they should be? 471
A. Yes, sir.
Q. Is that true of all of them?
A. Yes, sir.
Q. Some of them do not give any lake frontage at all, is that so?
A. In making that map I had no reference to the water at all.
Complainants' Exhibit "E. 1," field notes and calculations of County Surveyor, offered in evidence.

Adjourned to 2:30 o'clock of said day.

Taking of testimony was resumed at 2:30 o'clock P. M. of said 11th day of January, 1899.

MR. MERRITT S. COOK, recalled and further Cross-Examination by Mr. Evans, testified as follows:

472 Q. By reference to Exhibit "A" I understand that you accepted the section corner between 4 and 5 and 8 and 9, as located by the Patton survey?

A. Yes, sir.

Q. Where did he also locate a corner between 3 and 4 and 9 and 10?

A. I don't think he located that. There were only two corners 5 and 6 and 7 and 8 and 4 and 5 and 8 and 9.

Q. He located two corners?

A. I think that is all.

Q. Well, did not his field notes locate the corner between 3 and 4 and 9 and 10?

473 A. Not directly the notes, you could compute the location from the notes.

Q. What do you mean, he put a monument there?

A. He put no monument there.

Q. In making this survey which is shown by plat "A" did you accept the corner as located by his field notes between 3 and 4 and 9 and 10, or did you go north of that?

A. He had no corner set; I just computed the distance from his field notes of the outside boundaries.

Q. You did not set your corner the same as he would have done if he had set a monument?

A. There might be a little differenec in measurement, should be about the same.

474 Q. I show you a plat, which I will ask to have marked Defendants' Exhibit "P", and ask you if you know what it is?

A. I see it is a plat of something.

Q. Do you know what that is, Mr. Cook; do you know what it is, is it made by Mr. Patton?

A. I don't think it was, it don't look like it. The north boundary of the township is practically correct, those red lines I know nothing about, the red line and the square work.

Q. Did you ever see the survey made by Mr. Dever and Mr. Patton?

A. I never saw—what do you mean, the notes?

Q. Yes, the notes and the plat?

A. I never saw any plat.

Q. You have seen the notes?

A. Yes, sir.

Q. Were those the notes you referred to?

A. Yes, in the County Surveyor's office.

Q. You don't pretend to say from the section line of section 9 as shown on this Exhibit "A"—you don't pretend 475
to say that is made from the field notes of the Patton survey, the north line of section 9?

A. It is made from his notes.

Q. After locating the section corner 4 and 5 and 8 and 9 does the line, according to Patton's notes, run in the same direction as you have made it?

A. It must.

Q. Well, does it?

A. I should say it does.

Q. It does not run straight East?

A. It proportionately deflected to the North, the same as the North line of the Township at section 4. 476

Q. Have you got the notes of the Dever survey here?

A. No, sir.

Q. Have you got them?

A. They are not in my pocket.

Q. Now, what other corner besides these corners of 4 and 5 and 8 and 9 did Patton establish?

A. On the ground 5 and 6; 7, 8 and 4, 5 and 8, 9. All the other corners located there would be made from his notes, divided up proportionately each way by measurements.

Q. What data, what authority did you have for making these extensions of the limit lines of the various lots surrounding the lake, as shown by the red dotted lines as ap- 477
pear on the plat?

A. That is merely an application of the first rule of subdividing riparian rights.

Q. Do you mean to say that, assuming the lake to be as it is as shown upon this plat, that there is a rule for the establishment of riparian rights that would lead to these results?

A. It would not be an absolute rule. If the lake was irregular they would all converge to the center, if it was

semi-circle they would converge to what would be the centre of a circle.

Q. You don't give lots 3, 5, 6 and 7 in section 4 any lake frontage at all?

A. I presume not. I had no reference to the water boundary when I made that subdivision because it was made from the rule of subdividing from the meander line. If the water should govern it would make it more difficult to make the subdivision.

Q. You make the extension line of those lots that I have
478 just named converge to a centre which is north of the lake, north and west of the lake proper; you say that is according to a rule?

A. It is not an established rule, it is a principle. I do not know of any absolute rule.

Q. Didn't you make it because of a division of land between clients in this case and the Security Land Company?

A. Who did you say?

Q. The Security Land Company?

A. That was something I did not know about until after the map was made. It runs from the centre of section four to the south east corner.

Q. You made it according to admissions between your
479 respective rights, assuming that they had actual title to the land, so it was an agreed upon designation, not any rule, there was no rule for it?

A. It was a kind of an agreement between the parties, it might have been a quit claim.

(BY MR. STANFORD.

Q. You refer to that line from the center of section four to the south east corner of the section?

A. Yes, sir.)

Q. What particular line—did that line mark the boundaries as between these two owners?

A. It was supposed to represent it on the map, yes sir.

480 Q. Well then, your extension of the lot lines crossed it?

A. I think it did.

Q. I will ask you again if you can refer me to any rule of surveying which, in the absence of any agreement between the parties, would justify such a subdivision as you have made there?

A. I know of no rule that would bind the parties, of course their agreement would supersede it.

Q. Now then, this agreement was made according to an agreement as you understand it?

A. Not to an agreement, just the principle of subdividing frontage.

Q. What rule of subdivision of frontage on meander line did you follow in making this?

A. It would converge to the center if it were circular or semi-circular.

Q. In case it would be a circle any fellow would have a chance on the lake front, wouldn't he?

A. According to what you mean, the lake, I call all that part inside of the meander line, I call that the lake legally, when I was subdividing the frontage I made deflections from 481
the meander line.

Q. Now I understand the principle upon which you work, on the principle that there was no actual lake there?

A. I ignored it entirely.

Q. You ignored it entirely?

A. Yes, sir.

And upon Re-Direct Examination by Mr. M. H. Stanford, said witness testified as follows:

Q. Mr. Cook, in running those lines respresenting extensions of the lots to the actual waters of the lake, did you have in mind a principle giving different parties any particular share of the lake frontage? 482

A. Not the water. In making the map I made it independent of the location of the lake itself.

Q. Then you made it without reference to the location itself those extensions of the lot lines?

A. Yes, sir.

Q. Mr. Cook, now this defendants' Exhibit "1" that you have examined, you may state whether or not that is a map at all of anything in existence in Township 57-17 or whether it is a mere sketch in ~~on~~ principle involved in the survey of that Township?

A. The map is ambiguous; it has two township lines on the North.

Q. How about the sections as represented there? 483

A. They appear to be represented very nearly square.

Q. How about that surplus between this red line and the black line which is at the top?

A. There is a surplus there, I don't know what to call it.

Q. Where would that surplus appear on a plat of that kind?

A. It appears to be between the north line of the north sections and the township line.

Q. It would be merely an addition to the north tier of sections, it would be an addition of territory—now for instance, this is a square section this would place it there all the surplus in one section (indicating)?

A. The surplus that is between these two lines is still there, there is no west line of the surplus.

Q. What could you do with that territory lying between that red line which appears as a section line and this north township line? (indicating).

A. You will have to ask the man that made the map.

484 Q. It don't represent anything?

A. I don't know as it does.

Q. There is nothing in fact in the condition of that territory that that sketch would represent?

Q. There is nothing in fact in the condition of that territory that that sketch would represent?

A. That is all I can make of it. It don't represent anything.

Q. Now, as to that complainants' Exhibit "B", what is the difference between that and this defendants' Exhibit "Y"?

A. I don't see much difference only the North boundary in Exhibit "Y" is approximately correct that is the 485 black line representing the township line is added to this Exhibit "B".

Q. Otherwise it is the same?

A. It appears to be the same.

Q. In other words this lake is put in there with square townships, with square sections and square sub-divisions?

A. It appears to be.

Q. Mr. Cook, in making a re-survey of township 57 N. R. 17 west, in order to make a correct survey, I will ask you whether it would be necessary to cut timber in running the line, the necessary lines to make a survey?

A. I think it would be necessary.

486 Q. Any considerable amount?

A. All that part of the township that I have seen appears to be pretty well timbered.

Q. How would you proceed to make a correct survey of any portion of that township leaving the Patton survey out of the question?

A. I would have to run transit lines.

Q. Where would they have to run?

A. In making an independent survey you would have to surround the township with the four boundaries and in order to establish interior corners you would have to run

air lines through the township in both directions north and south east and west.

Q. And then?

A. Make correct measurements.

Q. Then what would you have to do?

A. Correct your intersections by the original field notes so as to make proportionate miles or section lines all through the township, in proportion to the old survey.

Q. What do you mean by proportion?

A. For instance—the North and South lines through the center of the township overruns about 90 rods at that you would have to divide up in proportion all through the township. 487

Q. You are talking about the original survey?

A. The original survey shows the miles should be equal and in that case you would have to make the subdivisions accordingly, make all miles equal under the north and south lines, except where there are fractions on the north boundary that would vary a little, as a general thing you make the miles north and south equal.

Q. If it was an original survey, as suggested by Mr. Evans, would an original survey be accepted, with such a survey as existed there would it be accepted by the government? 488

A. It might.

Q. How as to surplus on the north line in the original survey?

A. No, the original survey did not show a surplus.

Q. Suppose you were going to make an original survey and the field notes would show there was that difference, that is the difference existed between the—that there was that surplus in the north part of the township that exists in this township, would such a survey as that be accepted by the government?

A. You could not suppose that I could make an original survey of this township, but in making the original survey the overplus is left on the outside on the north tier of sections and the west tier. 489

Q. How much surplus, over and above what would be a full township, would the government accept as a survey or set aside?

A. I don't know as there is any limit to the surplus; it is only marked on the the last tier of sections, sometimes there is an overplus of 80 rods; it depends on the township boundaries. I have seen townships that would have half a mile extra where it closes on to a correction line.

Q. We are assuming that this survey is an original survey, no lines to close on except the township boundary?

A. The township lines are always run first in new territory, subdivisions are generally made by another party entirely. If the township lines are accepted as fixed, if the plat shows it to be correct the overplus in measurement north and west is noted on the plat, I don't know if there is any limit to that surplus, if the commissioners are satisfied with the township lines and satisfied that the subdivision is made in accordance with the law I don't know as
490 there is any limit to that surplus.

Q. In a case like this, where the survey is supposed to be made where the field notes are returned by the surveyor and the Surveyor General has made his plat from the notes filed and acepted by the Government, how does it differ in making a re-survey of that township from an original survey?

A. In that case the re-survey has to conform to the original, if there is an excess you must extend your measurements and if there is a shortage you must contract your measurements, each approximately.

Q. Your method in making Exhibit "A", what did you
491 first do in making that plat?

A. I first estimated the courses and distances all around the township and computed the latitude and longitude to see if it is correct and from that I could compute. After having a few opposite corners I could compute the distance between them.

Q. State what you did?

A. I computed the north and south lines first and then took the east and west lines and computed an air line first then from the original notes and subdivision of the north and south lines I computed the east and west line which is generally pretty irregular in the north part of the township; the north part being so irregular would affect the
492 east and west lines; the north and south lines are pretty near straight but the east and west lines going towards the north would all be deflected from the regular straight line on account of the irregular northern boundary. On the north and south lines through the center of the township would be the most overplus and it would deflect the east and west section lines to the north all the way through.

Q. After you had the section corners on the boundary established what did you do?

A. I computed them and then made my map.

Q. After you got your map what did you do with the meander lines?

A. Took them from the original meander notes of the Howe survey.

Q. The actual waters of the lake to the south east how did you trace that in?

A. That is from personal observation and measurements and whatever information I could get from other maps.

Q. State whether you put it in there in accordance with certain distances from corners? 493

A. I located the south and west part of the lake from the section corners, and the measurements on the county road.

And upon Re-Cross-Examination by Mr. Robert G. Evans, said witness testified as follows:

Q. Did you ever measure from the west side of the township to the line, Mr. Cook?

A. No, sir.

Q. You don't know if the location of the west boundary of that lake is right or not with reference to the west boundary of the township?

A. Not directly; am satisfied by location from measure- 494
ment from north quarter post of section 5 then south taking careful measurements and we triangulated and located the lake practically the same in each case.

Q. If you were making a survey of that township as Howe makes it, as in an original Government survey, you would run the lines straight?

A. I think I would if I were making an original survey.

Q. If you were making a survey under instructions from the Government?

A. In re-surveying Government territory that is the usual practice.

Q. Isn't it the universal practice?

A. I think it is generally. 495

Q. You could have done that in this instance clear up to the five mile limit?

A. Not according to the original plat, after the plat is made you have to be governed by it.

Q. Were there no monuments there?

A. There were monuments around the township.

Q. Were there no monuments set inside?

A. But the outside monuments governs the measurements.

Q. Do the old notes show the lines deflected toward the North?

A. No but the monuments govern.

Q. So far as the field notes show a square township?

A. Yes.

Q. The reason why you say you can't do that is because you believe the rule of division to be—

A. After a township is once surveyed a re-survey is governed by the original plat making subdivisions accordingly by proportionate measurements.

496 Complainants' Exhibit "C" is offered in evidence.

C. E. BAILEY, a witness produced on behalf of said complainant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, upon oral interrogatories propounded to him by M. H. Stanford, solicitor for complainants, testified as follows:

Q. Mr. Bailey where do you reside?

A. At Virginia, Minnesota.

Q. What is your age?

A. 40 years old.

Q. What is your business and how long have you been engaged in it?

497 A. Mining engineer and civil engineer, I have formerly done a great deal of surveying.

Q. Land surveying?

A. Yes, sir.

Q. Are you familiar with Township 57 North of Range 17 West in this county?

A. Yes, sir.

Q. State what is your actual experience in this line of business?

A. I have been mining and civil engineer and in the surveying business for fifteen years. Down in Houghton among the copper mines I was Deputy County Surveyor from 1884 to 1889 and had during that time a great deal
498 of subdividing work coming up, I was very familiar with subdivision work. I have been familiar with all work done on the Mesaba Range but my larger experience was among the Michigan copper mines where the values were large and the work had to be done very correctly.

Q. You may state what that is that you hold in your hand?

A. It is a plat of a portion of 57-17 with a little part of 58-17 showing Ely Lake and surroundings.

Complainants' Exhibit "D" offered in evidence.

Q. Who made that plat?

A. I made it myself.

Q. You may state the plan pursued by you in making that plat and what you based the plat on, what investigation and information and authority?

A. The Patton survey giving courses and distances around 57-17.

Q. That is the entire township?

A. Yes, sir, the three lines cut through the interior being checked in a great many instances by work done by myself and my deputy and in every instance found to be fairly correct was the general basis of the work. The 499
whole thing is made to scale and shows everything exactly as it is.

Q. On the ground?

A. On the ground. The deflections that show on the map on the boundaries are as they actually exist on the ground. In nearly every case on the north line and on three of the corners on the west line I have examined with the Government field notes in my hand the bearing trees and found them to correspond with the Government field notes, which satisfied me of their accuracy and gave the basis of a survey. This is certified to in the County Surveyor's records. The lake as it actually exists was meandered 500
by taking courses and distances in six different directions and chaining along those courses and where the shore line was not regular offsets were measured from these lines to the shore line. On the eastern bay the actual shore line was located in six places by pacing.

Q. Can you state where that was as you go along?

A. That point there and that east end there. (Indicating.)

Q. Can you state what in relation to the plat?

A. Starting from the township line east of the north quarter of 2, I paced south locating the actual position of the lake and also by pacing I located the east end of the lake; the remainder was located by courses and distances 501
with the offsets measured and the actual position of the shore line on the map shows the actual position of the lake with reference to the exterior township lines and all lines show on the plat exactly as they are on the ground; the main shore line was platted in this way.

Q. You mean the actual shore line?

A. The main meander line. The end of each course and distance is put exactly in the position in these irregular 40s. that it would have come and actually did come on the Government plat corresponds to the Government survey

so a proportionate part of each 40 within the lake and outside of it corresponds to the Government plat. Is it desired that I give how I arrived at that?

Q. Yes.

A. The government field notes close on section lines in meandering the shore line of the lake and in this case the closing was fairly accurate, on the assumption that all work was square and full.

Q. Now, do you refer to the Government plat?

A. No, I refer to the Government field notes. Meandered courses and distances are given on the government field notes from which the government plat is made, then each distance is figured and latitudes and departures and forced them to close and then put in the same position in the irregular 40s then made to correspond with where it would be if the 40 had been full and square.

502

The extreme end of the lake is platted from the ~~road~~ old notes, the Miller Trunk road notes, these notes were in my possession and are on file in the County Surveyor's office. I checked latitudes and departures from the north quarter post of section 5 clear down beyond St. Mary's lake closing on Mr. Patton's line and the latitude and departures prov~~ing the survey~~ correct with Mr. Patton's survey as they were checked against each other and were correct.

503

Q. Who made the survey of the Miller Trunk road?

A. Mr. Cook did the first work, I can't remember the County Surveyor who gave me the minutes.

Q. Mr. Cook who has just testified, who has just sworn, it was his work?

A. Yes. The interior lines were arrived at in this way. With the total distance North and South on actual measurement or from figuring latitudes and departures this total distances were divided in the proportion given in the Government plat of 57-17. On the east and west section lines the same principle was used except that the actual lines as they would be actually run were made proportionate rather than giving the absolute proportion of ~~easting~~ and ~~westing and~~ after the section corner ~~was located~~ the 40 lines ~~were~~ put in in the regular way.

504

Complainants' Exhibit "D" is offered in evidence. Scale 1000 feet to the inch.

Q. Mr. Bailey I offer you, I hand you for examination Complainants' Exhibit "A" and will ask you to say if you know what that is?

A. It is evidently a plat of 57-17.

Q. State what examination and comparison you have

made of it that paper which you have in your hand with a view to ascertain its accuracy? as a part of that Township or any part of it? squared

A. I have not ~~scaled~~ it, it appears to be correct, to square ~~show~~ everything in proper proportions.

Q. How is it as to sections adjoining Ely Lake as to that?

A. They appear to be actually as the lines are on the ground where there are Government corners to determine these lines where there are none they appear to have been put in ~~proportionately~~. approximately 505

Q. Have you not made an examination of that plat in connection with your field notes?

A. No, sir.

Q. I wish you would examine Complainants' Exhibit "B," what would you call that Mr. Bailey?

A. I would call that a sketch, I don't think that it is either a plat or a map. If those sections are square and all those 40s are square it is one of the first cases on record that I have ever known of.

Q. How does it represent the contour of Ely Lake, the actual lake, its location in that Township?

A. So far as I can see it is largely a copy of the Government plat with the lake as it is, (~~exists~~) sketched in but 506 sketched in very roughly indeed, very carelessly.

Q. Do you notice any particular portion more out of position than others?

A. The south west end of the lake is over a quarter of a mile in error.

Q. Which way?

A. Too far north and too far East.

Q. Each way more than a quarter of a mile?

A. It does not extend as far south west by a quarter of a mile as the actual lake. There is ~~an~~ attempt made to show the Northern boundary as it actually is, it is nothing more than a sketch unless the map is intended to represent a copy of the Government plat with the actual lake sketched 507 in, if so the lake is sketched in very roughly and carelessly.

Q. In making your plat Exhibit "D", which is offered in evidence, state whether you were governed by the record or courses on the East and West lines, with regard to courses on East and West lines?

A. I made it up on the ordinary rule of subdivision for lost corners and made section lines both East and West and North and South proportionate for those called for in the Government plat.

Q. I would like to ask you, Mr. Bailey, what property, if any, would be affected by a re-survey of the North portion of this township and how it would be affected?

A. There are ten 40s underlaid with ore in sections 5 and 6 with a tonnage of twenty million tons of ore on which mining has been in progress for five years and the section corners as set by the Patton survey have been accepted and month by month these have been used, in mining, to the lines of the different 40s for several years and a great deal of complication and expensive litigation is bound to
508 follow any changes of the Patton corners.

Q. State what other property you have mentioned would be affected by a re-survey?

A. The boundaries of timber lands in a great many cases would be and nearly all the timber cut in the last four years since the Patton survey has been cut on the lines based on the Patton survey. The owners applied through the ~~Board of~~ County ~~Commissioners~~ to have the question of boundaries settled and it authorized the County Surveyor to proceed and the owners of the larger proportion of values in the township have accepted and been using these lines for several years.

Q. Just look at that Mr. Bailey?

509

OFFERS IN EVIDENCE COMPLAINANTS' EXHIBIT "E."

Q. This paper is designated as Exhibit "E," can you say whether—what survey, if any, was called out pursuant to the resolutions of the Board of County Commissioners, mentioned in Exhibit "E"?

A. The Patton survey was the outcome of this by the authority of the Board of County Commissioners.

Q. He acted under authority of this?

A. Yes, sir.

510 Q. Since that survey these mines have been operating under that survey, and a change would create trouble?

A. Yes, sir, conflicting boundaries in quite a number of cases, representing a large tonnage of ore, would be affected by any change.

Q. In making a re-survey of this township state whether it would be necessary or not to have any amount of timber cut in order to make an accurate survey?

A. Several miles of lines would have to be chopped and a good deal of timber destroyed and the down timber would leave a danger of fire, it would be very objectionable.

Q. Why would these lines have to be cut?
A. In order to set the corners of sections.
Q. How about running the lines by transit or otherwise?
A. You would have to chop the lines out in order to do the work accurately.
Q. How wide would you have to cut them?
A. At least four feet so as to see clearly. In clearing lines long distances there is liable to be high places. If any work is done there it would have to be done accurately or it had better not be done at all.
Q. What character of timber would have to be cut? 511
A. A good deal of pine would have to be. Then a great many of the lines run there, in some cases three or four lines run to cover the same object.

And upon Cross-Examination by Mr. Robert G. Evans, the witness testified as follows:

Q. Did you cut any lines when you were through there?
A. I have chopped within the township some four miles of lines all together.
Q. Did Patton cut any lines?
A. Yes, sir.
Q. Did Mr. Cook cut any? 512
A. The road was built on Mr. Cook's lines and all the timber on the roadway was cut. I don't know if there was any damage by the lines of Mr. Cook.
Q. There would be no special damage in cutting of other lines except the timber taken down?
A. There would be a good deal of timber felled and there would be danger of fire.
BY MR. STANFORD:
Q. Has not some portion of it burned?
A. There was no loss except the amount of timber actually destroyed.
BY MR. EVANS:
Q. This map you made at the request of these com- 513
plainants?
A. It was made up for general use with reference to my work.
Q. Under employment from them?
A. It was made before I knew it was to be used for it.
Q. The question was was it made under employment from them?
A. I can't say that it was.
Q. For whom was it made?

A. It was made at my own expense. I ~~made it to determine mine boundaries and used in running lines around the lake. For mine boundaries it was necessary~~ to have it accurate.

Q. At whose instance?

A. Nobody paid me for it. In ~~my mine~~ contracts for different parties I had to have it.

Q. Did you have some contracts with the ~~complainants~~ Consolidated?

A. Yes, the largest was with them.

Q. With their knowledge and consent you ran through
514 their lands?

A. Yes, sir, the lines I have run have been mainly for them.

Q. Now, the quarter lines are shown on your map that has been offered in evidence have they not?

A. Yes, sir.

Q. On the dotted lines?

A. Yes, sir.

Q. The section lines are shown solid?

A. Yes, sir.

Q. I will ask you if you have computed the number of acres in lot 1 section 10 as appears on the Government plat, if that lot was extended to the actual shore of the lake?

515 A. It would be a little in excess of forty acres.

Q. To the actual shore line of the lake?

A. Yes, sir.

Q. How do you run that to the lake, Mr. Bailey, in that computation how did you run to the lake?

A. I have not figured accurately, approximately, through the line as near as I could at right angles to the general longitudinal trend of the lake.

Q. Suppose you extended lot 1 to the lake on the course of the forty lines on each side how much would there be?

A. I beg your pardon, this is the only portion I figured. (Indicating.)

516 Q. In that subdivision taking this—if you ran up on each side how much would you have?

A. I have not figured up that point would come up here. (Indicating.)

Q. I mean straight up just as in your map, the dotted lines extended?

A. The surplus or a part what is shown on the Government plat would be approximately 75 acres.

Q. Suppose you extended lot 1 in section 4 on the course lines to the lake do you know what the surplus would be there as shown on the Government plat?

PAGE CUT OFF

A. It would be about 120 acres.
Q. The same is true of lot 8?
A. Approximately.
Q. And in running to the lake it would cross two quarter lines and section lines between 4 and 9 would it not?
A. It would cross two forty lines and section lines, the quarter line is from quarter to quarter.
Q. You would cross two forty lines and section line between 4 and 9 in running lot 1 to the lake you would cross section lines the north boundary of 10 extending lot 1 to the lake, that is right? 517
A. Lot 1 and 4?
Q. No, in 5 extending to the lake you would cross those?
A. Oh, yes sir.
Q. I understand you to say that you measured the South west boundary of the lake to the town line on the west?
A. On the north.
Q. Only on the north?
A. I figured the latitude and departure from the north quarter, of section 5 clear down the Miller Trunk line until I closed on the Patton survey south of St. Mary's Lake.
Q. In doing so that included a portion of the south west arm of the lake.
A. Yes, sir. 518
Q. Of course the damage and inconvenience which you speak of and litigation which might follow a re-survey of the Township depends altogether on principally making a change in the Patton survey?
A. Yes, sir.
Q. I want to call your attention to some pencil marks inside of ..... line, they are not a part of your map?
A. No, they were put in rather hastily.
Q. You don't include them as a part of the map?
A. No, sir.
Q. The lines running in a southwesterly direction from the meander line of the lake?
A. They were just put in as true lines in lead pencil. 519
The only riparian line that I was called on to run on part of the lake where the shore line was fairly corresponded to a curve and I ran that line towards the center of the curve.

And upon Re-Direct Examination by Mr. M. H. Stanford, testified as follows:

Q. As a matter of fact there were no quarter or other lines within the meander line on the Government plat?
A. No, sir.

Q. In relation to the division of the fractional lots bordering on the actual waters of the lake, what is the plan, what plan would you pursue?

A. In dividing this up among the various lots, in case the channel was fairly straight or the trend of the two shore lines was approximately parallel and gave a uniform longitudinal trend I should carry a line down at right angles to the trend of the lake from the boundaries between the different lots. In case it curved I would carry them down towards the center of the curve with the endeavor to
520 give each the proper proportion.

Q. Of lake front?

A. If possible but there are some cases where it is impossible.

Q. In cases where it is possible?

A. It is desirable to give them lake front, but very often it is an impossibility.

J. D. LAMONT, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, upon oral interrogatories propounded to him by Mr. M. H. Stanford, solicitor for complainants, testified as follows:

521 Q. Mr. Lamont, what is your—you may state your name, your age and where you reside?

A. My name is J. D. Lamont, my age is 30 years and I reside at Virginia, Minnesota.

Q. What is your occupation, Mr. Lamont?

A. Mining engineer and surveyor.

Q. How long have you been engaged in that occupation?

A. About six years.

Q. What exeperience have you had as a land surveyor?

A. All my experience has been on the Mesaba range. I have been occupied subdividing on the Mesaba Range.

522 Q. What knowledge have you of Township 57 North of Range 17 West, in this county?

A. I ran several lines in the township, have been through around the township on the outside.

Q. You have been all around the township?

A. Not all. On the east line and the west and north.

Q. State the lines you ran over as surveyor?

A. I will have to have that plat. (Takes plat and examines it). Now, I ran over the North line of 57-17 from the north west corner of 5, I have run over that line, the whole section line to the north east corner of 5 and the

north line of section 4 57-17 and as far as the north quarter of section 3.

Q. The north quarter, that would be north?

A. The north quarter section post. I did this checking the measurements with Mr. Patton.

Q. On what is known as the Patton Survey?

A. Yes, sir.

Q. Or the county survey?

A. Yes, sir.

Q. Proceed and tell what you did else?

A. In section 4 I ran a line from the north quarter of section 4 south on the center line to the center of 4 then ran a line diagonally from there to the south east corner of 4, locating that corner, ~~up to~~ that time the corner had not been located. At the south east corner of section 5 I measured north from there to the Town line one mile ~~in~~ checking with Mr. Patton's work there; then I figured out an angle at the south east corner of 5, using Mr. Patton's work as a basis, ~~ran~~ a line west which struck the quarter post on the north of section 8 set by Mr. Patton checking it for courses and distances, then I turned an angle ~~east~~ from that same corner ~~the~~ south east of 5, and ran it about half a mile. Mr. Bailey afterwards ~~completed~~ it striking the south east corner of 4 making an entire check of it. Then I measured south from the south east corner of 5 half a mile then figuring out a course again on Mr. Patton's work as a basis I turned west and ran half a mile, then turned another angle and ran north a quarter of a mile, then turned again and ran out to the west boundary of section 8 and checked on post there which I set previously by measuring down from the north line. That is about all the lines I ran. 523 524

Q. In your testimony you say you ran in different directions north, south, east and west, state what you meant by that, general directions?

A. I went south and west or north in a general direction, not true north, or true west or east. 525

Q. On the lines as figured out in the Patton survey?

A. Yes, sir.

Q. In making these lines you ran them for the purpose of checking the Patton survey?

A. Partly, yes, but not all.

Q. What conclusion did you arrive at as regards the Patton survey?

A. Uniformly correct. Most of them came in checking within less than a foot.

Q. State what measurement, if any, you made from any particular point to the lake, that is the south west arm of the lake? confining the question to that?

A. I ran that line I spoke of before, from the center of 4 south east diagonally to the south east corner of 4; that was also figured out on the basis of Patton's work. Mr. Bailey had this Ely Lake plat at this time.

Q. On the same plat as this you have in your hand?

A. Yes, sir, and it showed, the plat showed Ely Lake to be 60 feet east of this corner (indicating).

526 Q. Which corner?

A. The south east corner of 4, and I located that corner and I paced from there out to the lake, and found this lake on this plat was correctly platted the distance from the point east to the lake scaled 60 feet on the map, which was shown to be the same on the ground by pacing.

Q. Then you are familiar with what is known as the Patton or County survey?

A. Yes, that is the only survey I ever worked on.

Q. What is that map constructed on the plan of?

A. On the plan of the Patton survey.

Q. I will show you complainants' Exhibit "B" and

527 will ask you what does that represent, if you can say?

A. Why, I think it represents the meander line of Ely Lake as shown on the Government plat, but the part of the lake itself does not seem to me to be as it actually is.

Q. But you know that it is not as it actually is?

A. Yes, sir.

Q. The boundaries—what property, if any, of value has been established by the Patton survey?

A. Within township 57-17 there are three working mines and about three or more that are working at present which contain valuable deposits of ore. The properties that are working are all using the boundaries, those made by the Patton survey.

528 Q. What would be the effect of changing the lines of the Patton survey as to these properties?

A. It would disturb all these boundaries and work great damage.

And upon Cross-Examination by Mr. Robert G. Evans, witness testified as follows:

Q. I will ask you was there ever a map made by Patton in the survey of this township?

A. No sir, that is I have never seen it if it was made.

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T. H. CROSWELL, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, upon oral interrogatories propounded to him by Mr. M. H. Stanford, solicitor for complainants, testifies as follows:

Q. Mr. Croswell, you are one of the defendants in this action, are you not?
A. I have lost track of the action Mr. Stanford.
Q. You had a contract with the Government for a re-survey of a portion of Township 57-17? 529
A. I did, yes, sir.
Q. You were engaged to do that work?
A. Yes, sir.
Q. Now, your work was confined entirely to building your camps and getting ready to make the survey?
A. We didn't have any camps, boarded right there.
Q. What work, if any, did you do in running any lines on the north?
A. All I did in running lines was from the corner of sections 3 and 4 and 33 and 34 an easterly course to the meander line of the lake and then also from that same section corner I started a little line south but never completed it. 530
Q. You didn't measure up any of it except run the lines?
A. I did measure but I have lost the notes of it.
Q. You simply ran over an old line?
A. Yes, sir.
Q. You did no other work?
A. That is all.
Q. It took you about how many hours?
A. I was there a day and a half.
Q. I mean in running lines?
A. About half a day.
Q. How much help did you have?
A. Three men besides myself. 531

THOMAS H. PRESSNELL, a witness produced on behalf of said complainants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, upon oral interrogatories propounded to him by Mr. M. H. Stanford, solicitor for complainants, testified as follows:

Q. Mr. Pressnell, state your age and occupation and where you reside?

A. I am 56 years old, live in Duluth and am Deputy Clerk of the United States Circuit Court.

Q. How long have you resided here?

A. In Duluth?

Q. Yes, sir.

A. Thirty years.

Q. State whether you know the complainants Messrs. Murphy, Robinson & Flinn and Dorr?

A. I do.

Q. How long have you known them?

532 A. Mr. Murphy and Robinson & Flinn I have known since 1882 and Mr. Dorr for four or five years.

Q. State what, if anything, you had to do with a purchase made by Simon J. Murphy in 1883 of lands in sections 1, 3, 4, 9 and 10 in Township 57-17 west in this county, I think there were also some other lands in the township North?

A. As agent of Graff & Little I sold those lands to Mr. Murpy, through Robinson & Flinn.

Q. What, if anything, at that time did you—what information, if any, at that time did you give out to these parties with whom you dealt as to any irregularities in the survey in that township?

533 A. Nothing.

Q. What was the basis of the purchase?

A. The basis of the purchase was pine timber.

Q. The basis of the purchase was pine timber, you say?

A. Yes. sir.

Q. What other conversation was entered into at the purchhase on the part of Robinson & Flinn and Messrs. Murphy and Dorr?

(BY MR. EVANS.

Q. If you know?)

534 A. The negotiations were carried on with Mr. Eveleth, Mr. Erwin Eveleth. I had advertised those lands for sale and had them for sale and he came in my office one day and got an option on the lands. He had a map. I don't remember if he had it at the time he got the option or afterwards, but we looked over that map at the lake with reference to its being a good place to hold logs or something of that kind. I remember that at one time I had shown him the outlet, or what was supposed to be the outlet as it showed on the map.

Q. You mean the Government plat?

A. Yes, sir, showing where the St. Louis river ran there, the lower end of it and a little stream from the lake ran down to it, and where that stream left the lake was a claim owned by C. N. Nelson Lumber Company. I suggested to him that he could easily make an arrangement with the C. N. Nelson Lumber ompany to get the use of that stream as an outlet for their logs on St. Louis River. I don't recollect that we had very much conversation. Mr. Eveleth seemed to know the situation; all he wanted was the option.

Q. Was there anything said at that time about the 535
riparian right, the right to use the lake and control the outlet between you and Mr. Eveleth?

A. I don't know as there was anything said, it was understood. For my part I don't know that I had any such conversation.

Q. No more than what you have stated?

A. No, sir.

Q. Did you have anything to do with selling to him this outlet of what you then supposed to be the lake?

A. I did afterwards; I sold it and some lands North from there, that was another transaction.

And upon Cross-Examination by Mr. Robert G. Evans, the witness testified as follows: 536

Q. You say that you had a map of the township?

A. A Government plat.

Q. You had a Government plat, was that a blue print of the Government plat?

A. No, it was a common copy generally used, Mr. Eveleth got it from the land office.

Q. Those were copies of the Government plat as filed in the Government land office?

A. I can't say.

Q. It was supposed to be?

A. The officers did not make plats just exactly as they were unless they were ordered to do so. They didn't put in 537
fractions or acreage in common plats, just tracings of the land.

Q. So you could see the boundaries?

A. Yes, sir.

BY MR. STANFORD:

Q. This plat had the location of the lake as shown on the Government plat and the streams?

A. Yes, sir.

MR. J. D. LAMONT, re-called and further examined by Mr. M. H. Stanford, testified as follows:

Q. I will ask you, Mr. Lamont, first, if you know the manner of subdivision of surplus territory as in the case presented in the territory around Ely Lake?

A. Yes, sir.

Q. I wish you would state the rule adopted by surveyors, and which you understand to be correct, for the division of the surplus territory in such case lying between the meander line and the actual waters of the lake among those
538 different government lots?

A. As I understand the rule, it is to give to each lot owner a share on the actual water front proportionate to his share as shown on the meander line of the lake as shown on the Government plat and each to have all the land lying between the extended lot lines to the points of boundaries on the actual waters. It does not matter the method which is adopted so long as it accomplishes this end.

And upon further Cross-Examination by Mr. Robert G. Evans the witness testified as follows:

Q. Did you ever have any experience in making divis-
539 ions of this kind?

A. No, sir, except the reading of decisions.

Q. Do you know of any case in order to do that where you would have to cross section lines in order to reach the lake shore?

A. No, sir, I do not.

Q. I would like to have you state in a general way the rule for dividing up surplus territory lying between the meander line, as shown in the Government plat, in such case as shown here, as adopted?

Q. I will ask you if you know the rule?

A. Yes, I am somewhat familiar with riparian boundaries.

540 Q. You may state the rule if you know it as I have asked it in the previous question?

The reporter will read the question.

Q. I would like to have you state in a general way the rule for dividing up surplus territory lying between the meander line, as shown in the Government plat, in such case as shown here, as adopted?

A. If there is a longitudinal channel or if the sides of the lake are comparitively parallel, the riparian boundaries are extended to the actual waters edge at right angles to

such channel or such side lines; if the shore line is circular the riparian boundaries are extended towards the center of the circle.

Q. State in a general way what is the object of the rule for subdivision of such territory as to the various lots?

A. To give them their correct proportion of the surplus and of navigable streams their proportion of water frontage

Q. Where do you get this rule?

A. From the repeated decisions of the Courts.

541

MR. C. E. BAILEY, being re-called and further examined by Mr M. H. Stanford, testified as follows:

Q. Did you ever have any experience in applying that rule just referred to by Mr. Lamont in a case like this?

A. In cases somewhat similar to this, in the Copper country where there were several hundred feet of made ground, where it was made by the dumping of sand and waste.

Q. That was in cases of made ground?

A. Yes, sir, where they made ground by dumping sand into the lake where the frontage was on the navigable wat- 542
ers and where it was a question of value.

It is agreed by and between the respective counsel that the following questions put to Mr. Lamont and the answers thereto shall be considered to have been put to Mr. Bailey and to have been answered by him in like manner, he having been present and heard the questions put to Mr. Lamont and the answers thereto.

Q. I would like to have you state in a general way the rule for dividing up the surplus territory lying between the meander line, as shown in the Government plat, in such case as shown here, as adopted?

Q. Iwill ask you if you know the rule?

A. Yes, I am somewhat familiar with riparian boun- 543
daries.

Q. You may state the rule, if you know it, as I have asked it in the previous question?

The reporter will read the question?

Q. I would like to have you state in a general way the rule for dividing up surplus territory lying between the meander line, as shown in the Government plat, in such case as shown here, as adopted.

A. If there is a longitudinal channel, or ~~such side lines~~; if the sides of the lake are comparatively parallel, the riparian boundaries are extended to the actual water's edge at right angles to such channel or such side lines

if the shore line is circular the riparian boundaries are extended towards the center of the circle.

Q. State in a general way what is the object of the rule for subdividing of such territory as to the various lots?

A. To give them their correct proportion of the surplus and of navigable streams their proportion of water frontage.

Q. Where do you get this rule?

A. From repeated decisions of the Court.

544 MR. J. D. LAMONT, being further re-called, on examination by Mr. M. H. Stanford, testified as follows:

Q. Now, in the case of Ely Lake between the meander line as shown on the Government plat, and the actual waters of the lake, are there any actual quarter lines as stated?

A. No, sir.

Q. Do not those lines show on the map made by Messrs. Cook and Bailey?

A. They may on that map.

And on Cross-Examination by Mr. Robert G. Evans, the witness testified as follows:

545 Q. If the township was divided in sections and quarter sections by running lines from the section corners east and west, that is from section corners on the east and west line of the township from the boundary line of the township would not the extension of the lots which are shown on the Government plat as bordering on the meander line of such extension to the lake across such forty lines and section lines?

A. I don't know absolutely that they would they might.

Q. Look at the plat and answer the question?

A. I see by this plat they do cross.

BY MR. STANFORD:

546 Q. How would that rule apply as to the conditions now existing at Ely Lake confining it to Ely Lake?

A. A division of lands inside of the Government meander line would be divided between the different owners according to the usual rule of riparian boundaries or by agreement and no section lines or forty lines would appear inside of this Government meander line.

It is agreed by and between the respective counsel that the following questions put to Mr. Lamont and the answers thereto shall be considered to have been put to Mr. Bailey and to have been answered by him in like manner, he, Mr.

Bailey, having been present and heard the questions put to Mr. Lamont and the answers thereto.

Q. Now, in the case of Ely Lake between the meander line, as shown on the Government plat, and the actual waters of the lake are there any actual quarter lines as stated?

A. No, sir.

Q. Do not these lines show on the map made by Messrs. Cook and Bailey?

A. They may on that map.

And on Cross-Examination by Mr. Robert G. Evans, the witness testified as follows: 547

Q. If the township was divided in sections and quarter sections by running lines from the section corners on the east and west line of the township from the boundary line of the township, would not be the extension of the lots which are shown on the Government plat as bordering on the meander line of such extension to the lake cross such forty lines and section lines?

A. I don't know absolutely that they would they might.

Q. Look at the plat and answer the question?

A. I see by this plat they do cross.

BY MR. STANFORD: 548

Q. How would that rule apply as to the conditions now existing at Ely Lake, confining it to Ely Lake?

A. A division of lands inside of the Government meander line would be divided between the different owners according to the usual rule of riparian boundaries or by agreement and no section lines or forty lines would appear inside of this Government meander line.

The Complainants thereupon offer in evidence a Patent from the United States Government to Addison G. Petrie, conveying lot No. 1 in section 3; lot 8 in section 4; lot 4 in section 9, said patent bearing date the 20th day of February, A. D. 1882, recorded in the office of the Register of Deeds of said St. Louis County on the 10th day of April, A. D. 1883, in Book "B" of Patents at page 577, which patent was marked Complainants' Exhibit "F." 549

Complainants then offer in evidence a certified copy of the record of a Power of Attorney from A. G. Petrie and wife, Henrietta Petrie, to C. B. Chandler, dated November 30, 1879, recorded June 24, 1880, in Book "A" of Powers 350, authorizing the said Chandler to sell and convey the

lands last above described, which Power of Attorney is marked Complainants' Exhibit "G."

Complainants then offered in evidence a certified copy of the record of a warranty deed, executed by Addison G. Petrie and wife, by C. B. Chandler, their attorney in fact, to Philip M. Graff and Daniel E. Little, bearing date May 26th, 1880, recorded in Book "L" of Deeds at page 548, which is marked Complainants' Exhibit "H."

Complainants then offered in evidence a Patent from the Government of the United States, dated February 20, 1882,
550 to Henry Koecher, conveying lot 2 of section 3 and lot 1 of section 4 in said township, which patent was recorded on the 10th day of April 1883, in Book "B" of Patents at page 576, and is marked Complainants' Exhibit "I."

Complainants then offered in evidence certified copy of the record of a deed, dated May 26th, 1880, from Henry Koecher and Catherine Koecher, his wife, to Philip M. Graff and Daniel E. Little.

Complainants then offered in evidence certified copy of a patent from the United States Government to James H. Ruttle conveying the S. E. ¼ of the N. W. ¼ and the N. E. ¼ of the S. W. ¼ of section 10, recorded in Book "A" of Patents at page 268, dated March 30th, 1883, hereto annexed and
551 marked Complainants' Exhibit "J."

Complainants then offered in evidence a Patent from the Government of the United States to James H. Ruttle, recorded in Book "B" of Patents at page 307, conveying lots 1 and 2 in section 10, hereto annexed and marked Complainants' Exhibit "K."

Complainants then offered in evidence certified copy of the record of a warranty deed from James H. Ruttle to Charles A. Moore, dated January 3rd, 1880, conveying lots 1 and 2 and the S. E. ¼ of the N. W. ¼ and the N. E. ¼ of the S. W. ¼ of section10 recorded in Book "L" of Deeds at page 410, hereto annexed and marked Complainants' Exhibit "L".

552 Complainants then offered in evidence a certified copy of the record of a warranty deed, dated January 13th, 1880, executed by Charles A. Moore and Mary G. Moore, his wife, to Daniel E. Little and Philip M. Graff, conveying the lands last above described, recorded in Book "L" of Deeds at page 499, hereto annexed and marked Complainants' Exhibit "M."

Complainants then offered in evidence certified copy of the record of a warranty deed from Daniel E. Little and wife and Philip M. Graff and wife to Angus R. Macfarlane,

conveying lots 1 and 2 and the S. E. ¼ of the N. W. ¼ and the N. E. ¼ of the S. W. ¼ of section 10, also other lands, recorded in Book "O" of Deeds at page 287, hereto annexed and marked Complainants' Exhibit "N."

Complainants then offered in evidence certified copy of the record of a warranty deed, dated January 28th, 1880, from Angus R. Macfarlane to Edmond D. Graff, conveying the lands last above described and other lands, recorded in Book "L" of Deeds at page 439, hereto annexed and marked Complainants' Exhibit "O."

Complainants then offered in evidence certified copy of 553
the record of a Patent from the Government of the United States to Eric Larson, dated 20th day of February, 1882, recorded in Book "B" of Patents at page 578, conveying lots 2, 3 and 4 of section 1, hereto annexed and marked Complainants' Exhibit "P."

Complainants then offered in evidence certified copy of the record of a deed from Eric Larson to Daniel E. Little, recorded in Book "L" of Deeds at page 546, conveying the lands last above described.

Complainants then offered in evidence certified copy of the record of a Patent from the Government of the United States to James B. Price, covering the N. W. ¼ of the S. W. ¼ and lot 3 in section 11 and lots 3 and 4 in section 10, dated 554
October 3rd, 1880, hereto annexed and marked Complainants Exhibit "Q."

Complainants then offered in evidence certified copy of the record of a deed, dated August 16th, 1882, recorded May 26th, 1883, in Book "W" of Deeds at page 441, from James B. Price, to John McDougall, hereto annexed and marked Complainants' Exhibit "R."

Complainants then offered in evidence certified copy of the record of a deed executed June 14th, 1883, by John McDougall to the C. N. Nelson Lumber Company, conveying the N. W. ¼ of the S. W. ¼ and lot 3 of section 11 and lots 3 and 4 of section 10 and other lands, recorded in Book "X" 555
of Deeds at page 215, hereto annexed and marked Exhibit "S."

Complainants then offered in evidence certified copy of a deed dated December 29th, 1893, recorded in book 7 of Deeds at page 149, from C. N. Nelson Lumber Co., to Simon J. Murphy, conveying the N. W. ¼ of the S. W. ¼ and lot 3 of section 11 and lots 3 and 4 of section 10 and other lands, hereto annexed and marked Complainants' Exhibit "T."

Complainants then offered in evidence certified copy of a warranty deed, dated April 11th, 1883, executed by Dan-

iel E. Little and wife and Philip M. Graff and wife and Edmond D. Graff to Simon J. Murphy, conveying lots 2, 3 and 8 of section 1, lots 1 and 2 of section 3, lots 1 and 8 in section 4, the N. E. ¼ of the S. W. ¼ and the S. E. ¼ of the S. W. ¼ ofsection 6, lot 4 in section 9, lots 1 and 2 and N. E. ¼ of S. W. ¼ and S. E. ¼ of N. W. ¼ and lot 4 of section 10 and other lands, recorded in Book "T" of Deeds at page 565, hereto annexed and marked Complainants' Exhibit "U."

Complainants then offered in evidence certified copy of the record of a Patent from the Government of the United
556 States to Morris Thomas, dated 30th day of January 1884, conveying the S. W. ¼ of N. W. ¼ and N. W. ¼ of S. W. ¼ of section 9 and lots 1, 2 and 3 of section 2 and other lands, recorded in Book 6 of Patents at page 350, hereto annexed and marked Complainants' Exhibit "V."

Complainants then offered in evidence certified copy of the record of a warranty deed from Morris Thomas to Simon J. Murphy, dated February 16th, 1884, conveying the lands last above described, recorded in Book "X" of Deeds at page 307, hereto annexed and marked Complainants' Exhibit "W."

Complainants then offered in evidence Patent from the Government of the United States to Robert Pratt, dated
557 October 3rd, 1888, conveying lots 1, 2 and 3 and the N. E. ¼ of S. W. ¼ of section 9, recorded in Book "G" of Patents at page 306, hereto annexed and marked Complainants' Exhibit "X."

Complainants then offered in evidence certified copy of the record of a special warranty deed from Robert Pratt to Scott Griswold, recorded in Book "S" of Deeds at page 355, hereto annexed and marked Complainants' Exhibit "Y."

Complainants then offered in evidence certified copy of the record of a deed from Scott Griswold and wife to Simon J. Murphy, conveying the lands last above described and other lands, recorded in Book "L" of deeds at page 50, here-
558 to annexed and marked Complainants' Exhibit "Z."

Complainants then offered in evidence certified copy of the record of a patent from the Government of the United States to Thomas W. Flinn, recorded in Book "G" of Patents at page 138, hereto annexed and marked Complainants' Exhibit "A. A."

Complainants then offered in evidence certified copy of the record of a patent from the Government of the United States to Charles Beaulieu, recorded in Book "G" of patents at page 137, hereto annexed and marked Complainants' Exhibit "A. B."

Complainants then offered in evidence a certain contract from Simon J. Murphy and wife to Elisha H. Flinn, conveying an undivided one-sixth interest to the land described in the Bill of Complaint.

Complainants then offered in evidence certified copy of a deed from Simon J. Murphy to Temple E. Dorr, recorded in Book 67 of Deeds at page 396, hereto annexed and marked Complainants' Exhibit "A. C."

Complainants then offered in evidence certified copy of the record of a deed from Simon J. Murphy and wife to George O. Robinson, recorded in Book 39 of Deeds at page 559
56, hereto annexed and marked Complainants' Exhibit "A. D."

Complainants then offered in evidence a deed from the Security Land & Exploration Company to Simon J. Murphy, George O. Robinson, Elisha H. Flinn and Temple E. Dorr, recorded in Book 68 of Deeds at page 582, hereto annexed and marked Complainants' Exhibit "A. E.", said lands being situated in Township 57 North of Range 17 W. St. Louis County, Minnesota.

I hereby certify, that in the taking of the above depositions the said witnesses were produced before me at my office, Room 800 Torrey Building, in the City of Duluth, State of Minnesota, on the 11th day of January, A. D. 1899, 560
and having by me been first duly sworn to tell the truth, the whole truth and nothing but the truth, were examined orally upon questions propounded to them by the solicitors for the respective parties, and that the said questions and answers of said witnesses thereto were, pursuant to stipulation of the counsel for the respective parties, taken down stenographically by me, and were afterwards written out by me personally.

I further certify, that all objections to questions propounded to witnesses, and the answers thereto, other than as to the form of questions, were, by agreement between the counsel for the respective parties, reserved, and may be 561
made on the reading of this deposition at the hearing of said cause as fully, and with the same effect, as though made at the time and noted by me, except as to documentary evidence.

I do futher certify, that the Exhibits introduced in evidence as hereinbefore enumerated, are hereunto annexed, marked Exhibits from "A" to "Z" respectively, both inclusive and from "A. A." to "A. D." respectively, both inclusive, and that all the same were received without objection.

And I further certify, that the signatures by the respective witnesses to their respective depositions were waived by the solicitors for both parties.

I further certify, that the said depositions were taken pursuant to the notice hereto attached.

In witness whereof, I have hereunto set my hand and official seal at the City of Duluth in the County of St. Louis and State of Minnesota, this 12th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

562

(Notarial Seal)

Harry H. Lemant
Notary Public,
St. Louis County, Minnesota.

Notary's fees	$10.00
Oaths	1.25
264 folios at 20c	52.80
Copies	26.40
Postage	.22
	$90.67

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563 United States Circuit Court, District of Minnesota, Fifth Division. In Equity

J. Murphy, George O. Robinson, Elisha H. Flinn, and Temple E. Dorr, Complainants,

vs.

P. H. Kirwan, as United States Surveyor General for the District of Minnesota, and Thomas H. Croswell, Defendants.

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564 Deposition of Thomas H. Croswell, taken on behalf of the defedant by agreement of parties, before H. H. Horn, Esq., Notary Public, in the Federal Building, St. Paul, Minnesota, on the 27th day of April, A. D. 1899, with the stipulation made at said time between the parties that said deposition may be incorporated in and made a part of the testimony in the above entitled case, with the same force and effect as if the same had been taken upon regular notice, and in all other respects in compliance with the rules of Court.

H. M. Stanford, Esq., appeared on behalf of the complainants.

Robert G. Evans, Esq., U. S. District Attorney, appeared on behalf of the defendants.

THOMAS H. CROSWELL, a witness produced and sworn on the part of the defendants, testifies as follows:

EXAMINATION IN CHIEF.

BY MR. EVANS.

Q. Where do you reside? 565
A. St. Paul.
Q. What is your profession?
A. Civil Engineer and Surveyor.
Q. How long have you been practicing that profession, been actively engaged in it?
A. About 12 years.
Q. You are one of the defendants in this case?
A. Yes.
Q. I present to you a map which I will designate, and have the same marked as Defendant's Exhibit 1, have you seen this map before?
A. Yes, sir. 566
Q. Who made it?
A. I made the map.
Q. What does it represent, what section and towns does it represent?
A. It represents the two northern tiers of sections of township 7 north, range 17 west.
Q. Based on what?
A. On the surveys of the north township line and the east and west township line, according to the Patton survey.
Q. I see upon this map certain lines in black, what are they intended to represent?
A. They represent the subdivisions of the township, pro- 567 portioning out the distances across the full length of the township according to the survey in the plat of Mr. Bailey, and the location of Ely Lake in the plat of Mr. Bailey.
It is admitted between counsel that the plat of Mr. Bailey referred to by the witness is Complainant's Exhibit "D."
Q. What do the red lines indicate?
A. The red lines indicate a survey of the township measuring each mile north and south 80 chains from the proper corner at the south township boundary; and the east and

west line the proper distance, according to the Howe survey from the east township line.

Q. Now take the south red line indicated upon this map, and what reference does it bear to the south line of the township?

A. It is practically parallel to it.

Q. Practically parallel to it?

A. Yes, sir.

Q. And what distance from it?

A. Four miles; with the exception of the west side, where
568 it is not parallel.

Q. That is, with the exception of the extension of such line beyond the west red line upon the map?

A. Yes, sir.

Q. What is the length of the westerly line of section 9, as you have it indicated in red on this map?

A. 80 chains.

Q. What is the distance from the north red line as indicated on the map to section 9, on a continuation of the west line of the section to the north line of the township?

A. 94.79 chains.

Q. That is from the northwest corner of the section to
569 the north line of the township?

A. Yes, sir.

Q. What is the distance from the northwest corner of section 9, as you have it indicated in red upon this map, to Ely Lake, on the red line?

A. 52 chains by the scale.

Q. The map is drawn to a scale, is it?

A. Yes, sir.

Q. What is the distance from the southwest corner of the northwest quarter of the northwest quarter of section 9, as indicated in red on this map, to Ely Lake?

A. That is 44 chains on the scale.

Q. What is the distance ~~from~~ along the north line, as indi-
570 cated on this map in red, of Lot 7 to its intersection with Ely Lake?

A. 86 chains and 50 links, according to the scale.

Q. Are all these lines of which you have given the distances running in an easterly and westerly direction, are they all practically due east and west lines?

A. Except the last one.

Q. Now we will take the north line as indicated in red of lot number 6, what is the distance on the north line of said lot to where it intersects the lake?

A. It will be 108 chains running over into the other section, section 3.

Q. I notice these two last lines, the distances of which you have given, do not run practically east and west.

A. No, they do not run practically east and west; they have a bend on the section line between section 3 and 4, as shown in red.

Q. Then they are straight lines across section 4?

A. Yes, sir.

Q. They are straight lines you say?

A. Yes, sir. 571

Q. And practically due east and west?

A. No, sir; they are not practically due east and west lines.

Q. On what basis, as far as direction is concerned, are these lines drawn on this map?

A. They are drawn o nthe subdivision of section 4, the east and west lines being the excess over 5 miles in the subdivision of the town.

Q. Then the deflection from the due east and west line, as I understand, is regulated by dividing up equally the excess on the lines where it appears on the north tier of sections. 572

A. Yes, sir.

Q. What is the distance in the east line of lot 4 ~~section 9~~, as indicated on this map, running from the south line of the lot to its intersection with Lake Ely?

A. 57½ chains.

Q. And the same with respect to the east line of lot 3, ~~section 9?~~

A. I will have to change my last answer; it should be 48.70

Q. That is the east line of lot 4?

A. Yes, sir.

Q. And what is the east line of lot 3?

A. 32 chains. 573

Q. That is between lots 3 and 4 in section 9?

A. Yes, sir.

Q. As I understand you, each of these red lines as drawn upon this map, indicates a Government subdivision of a forty acre tract or of a lot?

A. Yes, sir.

Q. What is the distance, as indicated on the red lines upon this map, from the east line of section 4 to its intersection with Ely Lake?

A. 90.20 chains.

Q. What is the distance, as indicated on this map in red lines, from the west line of lot 1, section 4, to its intersection with Ely Lake.

A. 92½ chains.

Q. What is the distance from the centre of the southwest quarter of section 10 due north, to its intersection with Ely Lake?

A. As indicated by the red lines?

Q. Yes, as indicated by the red line on this map.

574 A. 71.40 chains.

Q. What is the distance from the southeast corner of the northeast quarter of section 10 to its intersection with Ely Lake, as shown in red upon this map?

A. 85.40 chains.

Q. What is the distance from the southeast ~~corner~~ quarter of the northwest quarter of the southeast quarter of section 10 to Ely Lake, as shown by the red lines upon this map?

A. 77.60 chains.

Q. What is the distance from the southeast corner of the northeast quarter of the southeast quarter of section 10 to Ely Lake, as shown by the red lines upon this map?

A. 58 chains.

575 Q. What is the distance from the southeast corner of the northwest quarter of the southwest quarter of section 11 along the red line indicated on this map to its intersection with Ely Lake?

A. 92 chains.

Q. What is the distance from the north line of the township along the east line of Lot 2, section 3, as shown in red upon this map, to Ely Lake?

A. 54 chains.

Q. Now the same with the east line of Lot 1, section 3. What is the distance from the north line of the township along the east line of Lot 1, as marked in red upon this map,

576 to Ely Lake?

A. 34.20 chains.

Q. Now I notice two irregular lines running around Ely Lake practically; one is—dotted lines—one in black and one in red. What are they to indicate?

A. They indicate the old Government meander lines, according to the two systems of survey.

Q. When you say, according to the two systems of survey, you refer to what?

A. There is as I stated, the first system, following the

PAGE CUT OFF

Government rule, the Howe survey, in which the north and south lines are 80 chains long, and the east and west lines being the given distances in the Howe notes. That is the red system of survey and the black system is the same as that on Exhibit "D."

Q. That system is a proportioning of the distances across the entire township?

A. Yes, sir; the black lines.

Q. Giving to, each section its proportion of the excess?

A. Yes, sir.

Q. Or shortage? 577

A. Yes, sir; or shortage.

Q. And on the red system you throw all of the excess or shortage into the north and west tiers of sections?

A. Yes, sir.

Q. But not in the north and west tiers of forties?

A. No, sir.

Q. As I understand you, the difference in the two systems is what makes the difference between the black and red lines?

A. Yes, sir.

Q. When you speak of these lines as the meander lines, you mean the meander lines of Ely Lake as shown by the surveys you refer to. 578

A. Yes, sir; as shown by the Government surveys.

Q. You have seen the government plat of this township, have you?

A. Yes, sir.

Q. How does the red line compare with the line as marked by the government, the red meander line, wherein does it differ? How does the red meander line on this plat compare with the meander line on the government plat, and if there is any difference, wherein does it differ?

A. On this plat the red meander lines in sections 9, 10, and 11 would occupy the same position as it does on the government plat. 579

Q. As the meander line does on the government plat?

A. Yes, sir; but in sections 2, 3, and 4 it would occupy an altered position, depending on the excess in length of the line between sections 4 and 5 and sections 3 and 4, and the deficiency in length of the lines between sections 2 and 3 and 1 and 2.

Q. In other words, I understand you have extended the meander line in red on this plat to conform to the excess of distance on the north tier of sections?

A. Yes, sir; the excess or the deficiency.

Q. But is its general course and direction the same?

A. Why, it is approximately the same.

Q. Does it show upon what theory these lines here are drawn?

A. I think so. It does as I understand it.

Q. Is Lake Ely upon this map located the same as upon the map Exhibit "D"?

A. Yes, sir; it is located with reference to the black lines.

580 Q. It occupies the same position on this map as it does on Exhibit "D", the same as on Exhibit "D"?

A. Yes, sir; with reference to the black lines.

Q. Now, with reference to these red lines, the north and south lines south of the south lines of sections 3 and 4, what is their direction?

A. They run practically north and south, according to the Howe survey.

Q. According to the Howe survey.

A. Yes, sir.

Q. In other words, they run parallel to the east line of the township?

581 A. Yes, parallel to the east line of the township.

Q. These figures in red, what do they indicate?

A. That is the distance, the lot area, with reference to the red system of survey; and the black figures refer to the black system of survey.

Q. What do they indicate, distances on the map in chains?

A. Yes, sir; chains and links.

Q. Is the same true of the black figures with reference to the Bailey plat, complainant's Exhibit "D"?

A. Yes, sir.

Q. Have you been upon that tract of land or a portion of

582 it?

A. Yes, sir.

Q. Have you been to some of these corners that are marked, in the north boundary line of the township?

A. Yes, sir.

Q. Do you know the character and the topography of the country?

A. Yes, sir.

Q. Of the sections of land?

A. Yes, sir.

Q. To your own knowledge, have there been surveys made of it within the last three or four years?

A. Yes. At the time I was there in 1896 I saw some lines of survey.

Q. What is the character of the timber upon it as to growth, as to being thick or otherwise?

A. The timber consists of pine, and in with it is a heavy growth of balsam, fir, cedar, birch and spruce. There is considerable tamarack and spruce on the lower land.

Q. What difficulties, if any, are there in the way of making a survey of the township? 583

A. The roughness of the country.

Q. Any other difficulties?

A. The timber, thick timber would oppose some difficulty.

Q. Such being the difficulties, you would have to survey with more care and take more time?

A. Yes, sir; it would take a longer time, and it would have to be carefully done.

Q. With your experience could that survey be made there, and properly made, without any material injury to the soil or to the growing timber?

A. Yes, sir.

Counsel for defendants now introduce in evidence the map that has been referred to in and used in connection with the testimony of this witness, and the same is marked Defendant's Exhibit 1. 584

CROSS EXAMINATION.

BY MR. STANFORD:

Q. I understood you to say in your direct examination that all excess or shortage in this township appeared in the northern tier of sections. No, the excess appears in the northern tier of sections, and the shortage in the western tier of sections. 585

A. No.

Q. Will you state what you did say?

A. I said the excess or deficiency was thrown in the north and west tiers, in the red system of survey.

Q. In the red system of survey?

A. Yes, sir.

Q. That is the survey that differs from the survey Complainant's Exhibit "D"?

A. Yes, sir.

Q. How about the subdivision of that northern tier of sections under the red system?

A. The subdivision of the north tier of sections is divided according to the distances on the north and south lines. It is proportioned according to the distances given in the Howe survey on those lines.

Q. That is, the quarter post is set up forty chains from the south line of the section.

A. No, sir.

Q. When you subdivided these sections, giving to each
586 subdivision its proportionate share of the excess or shortage?

A. Yes, sir.

Q. Why does this refer to this one tier of sections and not to the remainder of the township?

A. It refers to two tiers, both on the north and the west.

Q. Why does it refer to the north and west tier of sections, and not to the remainder of the township?

A. Of course I can go into that question without reference to the map. The map, as far as this map is concerned, is made that way.

Q. That is the red system of survey?

587 A. Yes, sir. I can go on and explain the theory.

Q. I want you to answer my qestion,.that is all.

A. The map is made to throw the excess or deficiency in the north and west tiers. That is in distinction to your theory. You can make still another one if you want to.

Q. I don't care to go into that theory, but I want to know the theory upon which you base your red system of survey on.

A. Well, the theory would be this: That the error on this, on the survey of that township was all on the north and west sides. That is, any one purchasing land from the goverment in that township would buy it with the under-
588 standing that these sections up to five miles were not full sections.

Counsel for complainants moves to strike out the last answer of the witness as not responsive to the question.

Witness—I don't see what you want me to answer any further than that.

Q. What is the principle you used in throwing the remainder of the township, not the west side, in setting the quarter posts on these sections 3 and 4, and 4 and 5?

A. That the error in the subdivisions of the township,

comparing the Howe system and the actual facts in the case, is in the north tier.

Q. That is in accordance with instructions you receive from the Interior Department, is it?

A. I didn't receive istructions from the Interior Department.

Q. In your contract, your general contract, the instructions in your contract, your general contract, the instructions in your contract?

A. No, sir, understand this map and my instructions are two different things. This is not in accordance with 589
the instructions I received in my contract.

Q. Whose instructions is this map? According to whose instruction is that map made?

A. Well—

Q. I mean who instructed you to make this map in that plan?

A. I was instructed by Mr. Evans to make this map.

Q. Upon what theory?

A. To show—

Q. On what theory did he tell you to make that may?

A. To show a comparison between the different theories?

Q. A comparison between the different theories? 590

A. Yes, sir.

Q. Then that is all that map is for, simply to show a comparison between the different theories?

A. I don't see that it is for any other purpose.

Q. Have you done any work on the ground, or any sufficient amount of work to enable you to locate that lake there?

A. No, sir.

Q. Your plat is made from field notes and estimates entirely?

A. Yes, sir, it is made from the Patton survey, and Exhibit "D".

591

MR. EVANS:

And the Howe notes for the length of the lines?

Witness: Yes, sir.

Mr. Evans: The red lines are made on the Howe notes?

Witness: Yes, sir, the red lines are made on the Howe notes.

Q. Is it true that all east and west lines between sections are 80 chains lines in the field?

A. No, sir.

Q. You have assumed on your map that that is true, haven't you?

A. No, sir.

Q. How is that?

A. No, sir.

Q. The map is based upon that theory?

A. No, sir.

Q. How do you get your lines that far west of the black lines then?

A. As I stated before in my answer, these red lines were
592 based on the Howe survey, the distances that are given on the map.

Q. The Howe field notes?

A. Yes, sir.

Mr. Evans: When you say the Howe survey, you mean the Howe field notes?

A. Yes, sir.

Q. The field notes in the Howe survey, do they make them 80 chains?

A. Not all of them, no sir.

Q. You have run your east and west line parallel with the east boundary of the township?

593 A. I have not run my east and west lines in the field at all. But the position these lines occupy on the plat is practically parallel to the east and west boundary, they should be. But the distances of the deficiency, if any, in the Patton notes would give exactly whether they are or not.

Mr. Evans: I understand you to say, you intended to run these lines parallel with the east boundary of the township?

Witness: Yes, sir; with the east boundary of the township.

Mr. Evans: And the other parallel with the south boundary of the township up to five miles?

Witness: Yes, sir.

Q. I understand you to say your red lines on that plat are
594 made according to the Howe field notes?

A. Yes, sir; the distances on the east and west lines.

Q. Just the distances on the east and west lines?

A. Yes, sir.

Q. Nothing else?

A. The courses are practically the same also.

Q. The courses are practically the same?

A. Yes, sir.

Q. Now, Mr. Croswell, if you draw parallel lines to the eastern boundary of the township starting from the south-

ern boundary of the township and running northerly, your line will become practically the same as the red line on that plat, would they not?

A. Following the Howe field notes, they would

Q. They would, following the Howe field notes?

A. Yes, sir.

Q. Are you acquainted with the northwest portion of that township and the properties that are located there?

A. I know a little about them.

Q. You know there is considerable mining, and considerable amount of mining property there? 595

A. Yes, sir.

Q. You know the lines have been established according to the Patton surveys?

A. I don't know the corners now.

Q. If there should be a new system of survey introduced, different from and contrary to that upon which the mining lines have been established, it would have a very serious effect, would it not, upon values?

Objected to by defendant's counsel as immaterial, incompetent and irrelevant, and as not a part of the cross examination.

A. Why, I suppose if another system of survey changes 596 the lines from the way they may have them established now it would probably raise the question of values between different owners.

Q. And raise the question of lines between valuable mining properties?

A. Yes, sir; I should think so.

Q. You know that as a matter of fact from the nature of the properties in that part of the township?

A. From what I know of the properties there, I should think that would be the fact, yes, sir.

Q. Then there are objections to re-running the lines there, other than the cutting of timber, are there not, in making the survey? 597

A. Well, there are in that respect, yes, sir.

Q. In making an accurate survey of that portion of the towship, could you don much without running transit lines?

A. The question—Yes you could make an accurate survey with a solar instrument, but not to the same extent that you would with a transit.

Q. How wide would you have to cut the timber in locating the lines there on the ground, how broad must you have your lines in order to make an accurate survey?

A. Of course there are different degrees of accuracy. If you pursued the government rule of accuracy you wouldn't have to do any cutting to speak of.

Q. In a case where there are a good many hundred thousand dollars in values which may be affected, what system of survey would it be necessary to pursue in order to acquire the accuracy that would be deemed necessary in such a case?

A. The greatest degree of accuracy would be arrived at by the use of a transit, and making a transit survey.

598 Q. Could you make a transit survey of that territory, up there, without cutting a considerable amount of timber, valuable timber?

A. You wouldn't have to cut very much valuable timber I don't think.

Q. Isn't it heavily wooded all through there?

A. Yes, sir; it is heavily wooded.

Q. And somewhat rolling?

A. Yes, sir; somewhat rolling.

Q. Could you make a transit line of such a description as that, without cutting at least six feet wide?

A. Yes, sir.

599 Q. What would be the narrowest space in your opinion that would have to be cut in order to get a proper transit line?

A. Well, it all depends upon the degree of carefullness you use in cutting the line.

Q. I mean a high degree of carefullness, such as should be used where large values are at stake.

A. If you use great care. I make a difference between carefullness in cutting the timber, and carefullness in making the survey. But by taking care to run your line so as not to damage your timber more than possible, you can get through with a line not to exceed two feet wide.

600 RE-DIRECT EXAMINATION.

BY MR. EVANS:

Q. What injury would necessarily be occasioned to the merchantable timber on that tract of land in making a survey of it in the manner called for in your contract?

A. I don't think we would do any damage whatever to the merchantable timber according to my contract.

Q. Are there any valuable mining properties embraced

in the territory which you were to survey under your contract?

A. No, sir; not that I know of.

Q. You don't know that there is any mineral there?

A. Not that I know of.

RE-CROSS EXAMINATION.

BY MR. STANFORD:

Q. You know that section 5, has considerable valuable mining properties on it, don't you, in this town? 601

A. Yes, sir.

Q. Your survey commences on the east line, and includes the east line of section 5?

A. Yes, sir.

Q. And the setting of the south east corner of section 5?

A. Yes, sir; a temporary corner, yes.

Q. Could you run a survey or make a survey of the east line of that section, without surveying the entire section? Could you get the east line without surveying the entire section?

A. You wouldn't have to go round the north or west side. You asked me, according to my instructions; I think you 602 are under a misapprehension as to what they were. I was not required to make any survey, except the south and east sides of that, according to my instructions.

It is here stipulated between counsel that Exhibit No. 2 as set out in the answer of defendants, being the order for the survey, and Exhibit "D" attached to said answer, being the instructions under which the survey was to be made, are correctly set out in said answer and that the same may be used on the trial of this case by either party, with the same force and effect as if they had been introduced in evidence and made part of the case. 603

United States of America,
District of Minnesota.

I hereby certify that at the time and place mentioned in the caption hereof, I was attended by the parties therein named, and that Thomas E. Croswell, a witness of lawful age appeared before me in the presence of the said parties,

and before testifying was duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, that his deposition was then taken by me in the words and figures hereinbefore set forth, and that after reading over the same carefully, the witness subscribed the said deposition as being correct, and stated that the same was correct, and said deposition is herewith returned into Court as being the true deposition of said deponent, Thomas E. Croswell.

In witness whereof I have hereunto set my hand and seal the 2nd day of May, A. D. 1899.

604

N. HARCOURT HORN,
Notary Public.

(Seal)

COMPLAINANTS EXHIBIT "C."

FIELD NOTES

OF THE SURVEY OF THE

EXTERIOR AND SUBDIVISION LINE

—OF—

TOWNSHIP NO. 57 NORTH, RANGE NO. 17 WEST, 607
OF THE 1ST. PRINCIPAL MERIDIAN,
MINNESOTA.

SURVEYED BY HENRY S. HOWE, DEPUTY SURVEYOR. UNDER HIS CONTRACT OF APRIL 26, 1876.

SURVEY COMMENCED JUNE 20, 1876.

SURVEY COMPLETED JUNE 30, 1876.

608

South Exterior of Twp. 57 N. Range 17 W. 4th P. M.

From the Cor. to Twps. 56 & 57 N. Ranges 16 & 17 W.
which is a post from which
Tamarac 5 N. 25 W. 33 lks
Tamarac 5 N. 43 E. 73 lks
Thence I run
West on South side of Section 36.
Var. 10 degrees 12 minutes E.

37.00 Leave Swamp N. E. unfit for cultivation.
40.00 Set ¼ Sec. Cor.
609
Aspen 9. N. 44. W. 33 lks.
Aspen 8. N. 26. E. 42. lks.
43.00 Enter same swamp W. N. W.
75.00 Leave Swamp S. W.
80.00 Set post corner to Sections 35 & 36.
Tamarac 7. N. 50 W. 8 lks.
Tamarac 7. N. 49. E. 6. lks.
Surface gently rolling. Soil 2d rate.
Black, Pine, Tamarac, Spruce, Birch & Aspen.
Some good white & yellow pine.

West on south side of section 35.
Var. 10 degrees 30 minutes E.

40.00 Set ¼ Section corner.
Cedar 7. N. 41. W. 15 lks.
Yellow pine 15. N. 52. E. 56 lks.

54.24 Intersect St. Louis River 1.90 wide runs S. and set Meander Post.
White Pine 10. S. 43. E. 7. lks.
White Pine 10. N. 44. E. 6 lks.
Over river on line. Offset South 60 links. M. C. across river bears N. 72½ E. Dist. 190 links.

610

56.14 Set Meander Corner on Right bank.
Birch 10. N. 5. W. 7 links.
Birch 6. S. 4. E. 20. links.

60.00 Enter burned timber N. E.

80.00 Set post corner to Sections 34 & 35.
Yellow Pine 16. S. 1 E. 230 lks.
Yellow Pine 16. S. 18 W. 235.
Yellow Pine 16. S. 18 W. 235. lks.
Surface level & wet. Soil 2d rate.
White & Yellow Pine, Aspen & Birch.

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611 West on south side of section 34.
Var. 10 degrees, 15 minutes E.

1.00 Enter Swamp. W. S. W. & N. W.

40.00 Set ¼ Section post.
Spruce 4. N. 14. E. 12 links.
Tamarac 5. N. 60. W. 8 links.

70.00 Leave Swamp N. W. unfit for cultivation. Peat.

80.00 Set post corner to Sections 33 & 34.
White Pine 24. N. 20 W. 35. lks.
Tamarac. 6. N. 37. E. 38 lks.
Surface level Wet Soil. Clay 2d rate.
Timber, fire killed & much fallen.

612 ---

South Exterior of Twp. 57. N. R^a^nge 17. W. 4th P. M.

West on South side of section 33.
Var. degrees 10 E.

7.90 Stream 6. lks. wide runs south.

40.00 Set ¼ section corner.
Spruce 5. N. 32. E. 65 lks.
Spruce 7 N. 17 W. 89 lks.

43.00 Enter swamp N. E. & S. W.
80.00 Set post corner to sections 32 & 33.
Tamarac 7 N. 74 E. 169 lks.
Tamarac 6 S. 80 W. 139 lks.
Surface flat & wet. Good grass land. 2d rate.
Timber, fire killed, Tamarac & Spruce.

West on south side of section 32.
Var. 9 degrees 36 minutes E.
9.00 Le^ave swamp W. S. W. unfit for cult. 613
35.00 Enter swamp S. W.
40.00 Set ¼ Sec. Cor.
Spruce 7 N. 55 E. 43 lks.
Tamarac 6 N. 89 W. 213 lks.
60.00 Leave Swamp S. W.
80.00 Set post corner to Sections 31 & 32.
Yellow Pine 9 N. 34 E. 16 lks.
Yellow Pine 8 N. 57 W. 40 lks.
Surface level, wet. Soil sandy 2d rate.
Timber mostly fire killed, Pine, Birch & Spruce.

South and West Exterior of Twp. 57 N. Range 17 W. 4th P. M. 614

West on South side of section 31.
Var. 9 degrees 6 minutes E.
40.00 Set ¼ Sect. post.
Black Ash 6 N. 7 E. 61 lks.
Black Ash 6 N. 42 W. 56 lks.
80.00 Set post corner to selections 31 & 36 between Ranges 17 & 18.
Elm 17 N. 29 W. 87 lks.
Elm 8 N| 5 E. 62 lks.
Surface gently rolling. Soil sandy clay 2d rate.
Timber mostly fire killed Aspen, Spruce, Birch, B. Ash & Elm. 615
George R. Stuntz, July 12th, 1867.

North along the East boundary of Section 36.
Var. 8 degrees 15 Minutes E.
8.00 Creek 25 lks wide runs S. W.
40.00 Set a post for ¼ Sec. Cor. from which
Fir 3 S. 48 E. 40 lks. dist.
Fir 3 S. 50 W. 45 lks. dist.

60.00 Enter Swamp brs E. & W.
80.00 Set a post for Cor. to Sects 25, 36, 30 & 31 from which.
T^a^m. 8 N. 75 E. 50 lks dist.
Tam 5 N. 15 W. 37 lks dist.
Spruce 6 S. 30 W. 45 lks dist.
Tam. 8 S. 65 E. 38 lks dist.
Land rolling. Soil 3d rate.
Timber, Spruce, Tam, Birch, Cedar & Aspen.
Undergrowth the same.

616

South and West Exterior of Twp. 57 N. Range 17 W. 4th P. M.

North on East boundary of Section 25.
Var. 8 degrees 15 minutes E.

40.00 Set post for ¼ Sec. Cor. from which.
Tam. 6 S. 55 W. 25 lks.
Spruce 6 N. 38 E. 25 lks.
43.00 Stream 15 lks. runs West.
80.00 Set post for Cor. to Sects 24, 25, 19 & 30 from which
Cedar 10 S. 15 W. 12 lks.
617 Cedar 10 S. 15 W. 12 lks.
Ash 5 N. 76 E. 32 lks.
Birch 10 N. 47 W. 15 lks.
Land level & wet. Soil 3d r^a^te.
Timber, Spruce, Tam & Cedar. Undergrowth the same.

West Exterior of Township 57 N. ange 17 W. 4th P. M.

North on East bondary of Section 24.
Var. 8 degrees, 30 minutes E.

40.00 Set post for ¼ Sec Cor from which
618 Spruce 8 S. 36 W. 26 lks.
Fir 4 N. 10 E. 38 lks.
46.00 Leave Swamp brs. E. & W.
80.00 Set post for Cor. to sections 13, 14, 18 and 19 from which
Plk. Pine 18 N. 30 W. 75 lks.
Butternut 6 N. 35 E. 60 lks.
Cedar 14 S. 40 E. 10 lks.
Nor. Pine 16 S. 70 W. 80 lks.
Land rolling. Soil 3d rate.

Timber mostly fire killed. Spruce, Tam, Birch, Cedar & Scattering Pine.
Undergrowth, White Fir, Aspen & Alder.

North on east boundᵃry of section 13.
Var. 9 degrees E.

11.65 Set post on south shore of lake for Cor. to fractl. sects. 13 & 18 from which
Fir 4 S. 38 E. 26 lks.
Birch 6 S. 60 W. 19 lks.
To ascertain the distance across the lake on this line I run a base East 6 chains to a point from which the flag in line on North shore of Lake bears N. 12 degrees 45 mintes W. I find the distᵃnce to be 26.52 chs. 619

33.17 Set a post on South Shore of Lake for Cor. to fractional Sects 13 & 18 from which
Tam. 6 N. 48 E. 46 lks.
Tam 7 S. 8 E. 60 lks.

80.00 Cedar tree 4 in. dia. for Cor. to Sects. 12, 13, 7 & 18 from which
Maple 24 N. 43 E. 21 lks.
Birch 14 N. 50 W. 26 lks. 620
Cedar 5 S. 60 W. 23 lks.
Birch 6 S. 20 E. 20 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar, Tam. & Scattering of Pine.
Undergrowth, Fir, Aspen & Alder.

West Exterior of Township 57 N. Range 17 W. 4th P. M.

North on the East bondary of section 12.
Vᵃr. 9 degrees, 15 Minutes E.

40.00 Set post for ¼ Sec. Cor. from which 621
Tamarac 6 N. 38 W. 40 lks.
Nor. Pine 8 N. 52 E. 25 lks.

80.00 Set a post for Cor. to Sects 1, 12, 6 & 7 from which
edar 12 N. 10 E. 35 lks.
Cedar 8 N. 20 E. 60 lks.
Pine 12 S. 50 W. 28 lks.
Pine 20 S. 70 E. 43 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Tam., Cedar & Scatter-

ing Pine, Mistly killed by fire. Undergrowth, Alder, Aspen & Willow.

North on the East boundary of Section 1.
Var. 9 degrees 20 mintes E.

32.00 Creek 10 lks. runs West.

40.00 Set a post for ¼ Sec. Cor. from which
Sprce 5 S. 58 W. 20 lks.
Ceda. 5 S. 20 E 15 lks.

80.00 Set a post for Cor. to Twps. 57 & 58 N. Ranges 17
622 & 18 W. from which
Birch 7 N. 88 W. 22 lks.
Birch 5 S. 35 W. 12 lks.
Birch 8 N. 50 E. 13 lks.
Birch 8 S. 70 E. 25 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar & Scattering Pine.
Undergrrowth the same & Alder.
(West Exterior was surveyed by Henry S. Howe)
June 3, 1876.

East Exterior of Township 57 N. Range 17 W.
4th P. M.

623

Beginning at the post on the 7th correction line, the Cor. to Twps. 56 & 57 N. Ranges 16 & 17 W. I run North along the East bondary of Section 36;
Var. 10 degrees 12 minutes E.

9.00 Leave swamp brs. E. & W.

25.00 Enter swamp brs. E. & W.

37.50 Leave swamp brs. E. & W.

40.00 Set a post for ¼ Sec. Corner.
Nor. Pine 10 N. 85 E. 23 lks.
Nor. Pine 5 N. 86 W. 7 lks.

70.00 Enter swamp brs. E. & W.

624 75.50 Leave swamp brs. E. & W.

80.00 Set post for Cor. to sections 25, 36, 30 & 31 from which
Birch 8 S. 9 W. 31 lks dist.
Birch 7 N. 64 W. 36 lks dist.
Aspen 18 N. 24 E. 25 lks dist.
Birch 7 S. 5 E. 25 lks dist.
Land rolling. 3rd rate.
Timber: Birch, Spruce, Tam. & Aspen.
Undergrowth the same.

North along the East boundary of section 25.
Var. 10 degrees 12 mintes E.

6.50 Enter swamp brs. E. & W.
15.50 Leave swamp brs. E. & W.
31.50 Enter swamp brs. E. & W.
40.00 Leave swamp brs. E. & W. set post for ¼ Sec. Cor. from which
Aspen 8 N. 35 W. 34 lks.
Spruce 12 S. 86 E. 16 lks.
52.15 Set post on south bank of St. Louis river for Cor. to fractl. Secs. 25 & 30 frrom which 625
Birch 10 S. 86 E. 39 lks.
Elm 6 S. 31 W. 18 lks. River runs west.
To ascertain the distance across river on this line I run a base East 50 links to a point from which the flag in line on North bank bears N. 18 W. I find the distance across to be 1.54 chains.
55.69 Set post on North bank of river for Cor. to fracts. Sects. 25 & 30 from which
Aspen 12 N. 71 W. 56 lks.
Birch 6 N. 37 E. 32 lks.
60.00 Stream 20 lks runs S. W.
76.50 Enter swamp brs. E. & W.
80.00 Set post Cor. to Sections 24, 25, 19 & 30 from 626 which
Spruce 5 S. 7 E. 60 lks.
Spruce 6 S. 20 W. 30 lks.
Tam. 3 N. 10 W. 23 lks.
Tam. 3 N. 28 E. 50, lks.
Land level. Soil 3rd rate.
Timber, Spruce, Tam., Birch, Cedar & Aspen.
Undergrowth, Aspen & Alder.

East Exterior of Township 57 N. Range 17 W. 4th P. M.

North along the East boundary of Section 24. 627
Var. 10 degrees 12 Minutes E.

19.00 Leave swamp bears E. & W.
30.00 Enter swamp bears E. & W.
31.50 Leave swamp bears E. & W.
40.00 Set post for ¼ Sec. Cor. from which.
Nor. Pine 7 N. 45 W. 15 lks.
Nor. Pine 8 S. 23 E. 31 lks.
68.50 Creek 4 lks runs N. E.
80.00 Set Post Cor. to Sects 13, 24, 18 & 19 from which

Spruce 5 N. 11 E. 22 lks.
Spruce 3 N. 39 W. 18 lks.
Spruce 4 S. 41 W. 19 lks.
Spruce 5 S. 36 E. 32 lks.
Land level. Soil 3rd rate.
Timber, fire killed & fallen.
Undergrowth, Alder & Nor. Pine.

North on the East boundary of Section 13.
Var. 10 degrees E.

628
10.00 Enter swamp bears E & W.
40.00 Set post for ¼ Sec. Cor. from which
Tam. 3 N. 49 W. 22 lks.
Tam. 5 S. 24 E. 10 lks.
80.00 Set post corner to Sections 12, 13, 7 & 18 from which
Spruce 6 N. 12 W. 23 lks.
Tam. 8 N. 40 E. 98 lks.
Nor. Pine 10 S. 45 E. 80 lks.
Nor. Pine 6 S. 45 W. 40 lks.
Land level. Soil 3rd rate.
Timber, fire killed & fallen.
629 Undergrowth, Nor. Pine & Alder.

North Exterior of Township 57 N. Range 17 W. 4th P. M.

Aspen 15 S. 10 W. 10 lks.
Birch 8 5 80 E. 20 lks.
Land rolling. Soil 3rd rate.
Timber: Birch, Spruce, Cedar, Maple & Pine.
Undergrowth, same &

N. 89 degrees 53 Minutes E. on a true line between Sections 4 & 33.

630
Var. 9 degrees 30 minutes E.
26.00 Var. 80 West.
28.00 Var. 50 East.
40.00 Set a post for ¼ Sec. Cor. from which
Birch 7 N. 82 W. 12 lks.
Aspen 12 S. 25 W. 10 lks.
43.00 Var. 9 degrees 30 Minutes E.
67.00 Var. 12 E.
80.00 Set a post for Corner to Sections 3, 4, 33 & 34 from which

Birch 10 N. 15 E. 28 lks.
Birch 5 N. 20 W. 25 lks.
Birch 8 S. 50 W. 10 lks.
Fir. 4 S. 20 E. 60 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Cedar, Spruce, Maple & Pine.
Undergrowth, Hazel & Maple.

North Exterior of Township 57 N. Range 17 W. 4th P. M.

631

N. 89 degrees 53 mintes E. on a true line between sections 3 & 34.

Var. 9 degrees 30 minutes.

40.00 Set a post for ¼ Section Corner from which
Spruce 10 S. 28 W. 40 lks.
Birch 6 N. 16 W. 30 lks.

40.96 Set a post on N. W. shore of Cedar Lake for corner to fractional
Sections 3 & 34 frrom which
Birch 12 S. 36 W. 32 lks.
Fir 4 N. 28 W. 27 lks.
The distance across the lake on this line is 61.70 chains. 632
The corner to Sections 2, 3, 34 & 35 falling in the lake cannot be set.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar & Pine.
Undergrowth, Alder & Fir.

N. 89 degrees 53 mintes E. on a true line between Sections 2 & 35.

Var. 9 degrees 30 minutes E.

21.96 Set a post on the N. E. shore of lake for corner to fractional
Sections 2 & 35 from which 633
Pine 5 S. 68 E. 4 lks.
Birch 8 N. 19 W. 20 lks.

40.00 Set a post for ¼ Section Cor. from which
Aspen 20 S. 45 W. 6 lks.
Cedar 6 N. 80 W 12 lks.

80.00 Set a post for Corner to Sections 1, 2, 35 & 36 from which
Cedar 5 S. 49 W. 17 lks.
Cedar 4 S. 25 E. 19 lks.

Birch 5 N. 32 E. 9 lks.
Cedar 5 N. 6 W. 13 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar & Pine.
Undergrowth, Hazel & Alder.

N. 89 degrees 53 minutes E. on a true line between sections 1 & 36.

Var. 9 degrees 30 minutes E.

40.00 Set a post for ¼ section corner from which
634 Fir 4 S. 30 W. 21 lks.
Pine 10 N. 30 W. 27 lks.
80.00 The established corner to Twps 57 & 58 N. Ranges 16 & 17 West.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar, Aspen & Pine.
Undergrowth, Hazel & Alder.

June 19th, 1876.
(North Exterior surveyed by Henry S. Howe.)

Subdivision of Township 57 N. Range 17 W. 4th P. M.

635

Var. 10 degrees 20 minutes E.

40.00 Set a post for ¼ Sec. Cor. from which
Tam. 7 N. 10 E. 35 lks.
Tam. 8 N. 25. W. 40 lks.
40.20 Enter swamp brs. E. & W.
55.50 Leave swamp brs. E. & W.
68.02 Left bank St. Louis river, East. Set a post for ocrner to fractional Secs. 35 & 36 from which
Fir 8 S. 59 E. 12 lks.
W. Pine 18 S. 41 W. 13 lks.
To ascertain the distances across the river on this line, I run a base N. 47 degrees 51 minutes E.
636 63 lks. to a point from which the flag in line on right bank bears N. 17 degrees 12 minutes west, I find the distance to be 1.39 chains.
69.95 Set a post on a right bank for corner to fractional sections 35 & 36 from which
W. Pine 20 N. 23 E. 6 links.
Fir 8 N. 66. W. 11 lks.
80.00 Set a post Cor. to Sections 25, 26, 35 & 36 from which
Fir 5 N. 14 E. 32 lks.

Blk Pine 7 N. 34 W. 20 lks.
Fir 3 S. 25 W. 16 lks.
Birch 8 S. 65 W .20 lks.
Land rolling. Soil 3d rate.
Timber: Spruce, Birch, Aspen, Tam., Maple & Pine.
Undergrowth, Aspen, Fir & Alder.

East on a random line between sections 25 & 36.
Var. 10 degrees E.

4.42 Right bank St. Louis river, South, set a post for 637
Cor to Fractional Sections 25 & 36 from which
Birch 5 S. 85 W. 22 lks.
Pine 5 N. 22 E. 11 lks.
To ascertain the distance across the river on this line, I run a base N. 48 E. 1.00 chains to a point from which the flg in line on left bank brs. S. 68 degrees 40 minutes E. I find the distance to be 2.46 chains

6.88 Set a post on left bank for Cor. to fractl. Sects. 25 & 26 from which
Birch 6 N. 80 E. 20 lks.
Birch 8 S. 10 W. 12 lks.
638

40.00 Set temp. ¼ Sec. Cor.

80.10 Intersect East boundary line at corner to sections 25 & 36 from which corner I run
West on a true line between Sections 25 & 36.

40.05 Set a post for ¼ Section corner from which
Aspen 10 N. 52 W. 16 lks.
Birch 5 S. 26 E. 26 lks.

80.10 The Corner to sections 25, 26, 35 & 36.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Aspen, Tam., Maple & Pine.
Undergrowth the same & Fir.

639

North between Sections 25 & 26.
Var. 10 degrees E.

6.30 Creek 6 lks. runs S. E.

34.00 Enter swamp brs. N. E. & S. W.

40.00 Set a post for ¼ Sec. or. from which
Tam. 3 N. 25 W. 16 lks.
Tam. 4 N. 18 E. 10 lks.

80.00 Set a post for Corner to sections 23, 24, 25 & 26, frrom which

Spruce 6 N. 55 E. 11 lks.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

Tam 4 N. 25 W. 20 lks.
Tam. 4 S. 19 W. 36 lks.
Tam. 3 S. 40 E. 18 lks.
Land level. Soil 3d rate.
Timber: Spruce, Tam., Birch & Cedar.
640 Undergrowth the same.

East on a random line betwen Sections 24 & 25.
Var. 10 degrees E.

40.00 Set temp. ¼ Sec. Cor.
80.35 Intersect East boundary 24 lks North of Cor. to Sections 24 & 25 from which corner I run.
N. 89 degrees 50 minutes W. on a true line between Sections 24 & 25.
40.17 Set a post for ¼ Sec. Cor. from which
Tam. 4 N. 10 E. 21 lks.
Tam. 3 S. 56 W 13 lks.
641 80.35 The corner to sections 23, 24, 25 & 26.
Land level. Soil 3d rate.
Timber, small Spruce & Tam.
Undergrowth the same.

North between sections 23 & 24.
Var. 9 degrees 45 minutes E.

40.00 Set a post for ¼ section Cor. from which
Spruce 3 N. 31 W. 5 lks.
Spruce 4 N. 10 E. 7 lks.
41.00 Leave swamp brs N. W. & S. E.
642 80.00 Set a post for corner to Sections 13, 14, 23 & 24 from which
Tam. 8 N. 50 W. 50 lks.
Tam. 10 N. 22 E. 75 links.
Birch 8 S. 45 E. 65 links.
Birch 12 S. 25 W. 100 links.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Birch & Aspen, mostly fire killed.
Undergrowth, Aspen, Fir & Norway Pine.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

East on a random line between sections 13 & 24.
Var. 9 degrees 50 minutes E.

40.00 Set temp. ¼ Sec. Cor.
80.23 Intersect East boundary 30 lks. North of Corner to Sections 13 & 24 from which corner I run.
N. 89 degrees 47 minutes W. on a true line between sections 13 & 24. 643
40.12 Set a post for ¼ Sec. Cor. from which.
Birch 8 N. 70 E. 22 lks.
Cedar 6 S. 28 W. 5 lks.
80.23 The Corner to Sections 13, 14, 23 & 24.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Tamarac & Cedar, nearly all fire killed.
Undergrowth, Aspen, N. Pine & Fir.

North between Sections 13 & 14.
Var. 9 degrees 40 minutes E.

30.00 Enter swamp brs. N. E. & S. W. 644
40.00 Set a post for ¼ Sec. Cor. from which
Spruce 4 N. 10 W. 22 lks.
Spruce 3 N. 46 E. 18 lks.
50.00 A creek 5 lks wide runs west.
80.00 Set a post for Corner to Sections 11, 12, 13 & 14 from which
Tam. 3 N. 41 E. 17 lks.
Tam. 5 N. 74 W. 12 lks.
Tam. 3 S. 36 W. 14 lks.
Tam. 3 S. 29 E. 8 lks.
Land level & wet. Soil 3d rate.
Timber, Small Spruce & Tamarac.
Undergrowth, the same. 645

June 20th, 1876.

East on a random line between Sections 12 & 13.
Var. 9 degrees 40 Minutes E.

40.00 Set temp. ¼ Sec. Cor.
80.18 Intersect East boundary 26 lks N. of Corner to sections 12 & 13
from which corner I run

Subdivision of Township 57 N. Range 17 W. 4th P. M.

N. 89 degrees 49 minutes W. on a true line between sections 12 & 13.

40.09 Set a post for ¼ Sec. Cor. from which
Tam. 4 N. 9 W. 21 lks.
Tam. 3 S. 62 E. 15 lks.

80.18 The corner to sections 11, 12 13 & 14.
Land level & wet. Soil 3d rate.
646 Timber: Small Spruce & tamarac.
Undergrowth, the same.

North between sections 11 & 12.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ Sec. Cor. from which
Tam. 5 N. 19 W. 6 lks.
Tam 8 N. 80 E. 13 lks.

80.00 Set a post for Corner to sections 1, 2, 11 & 12 from which
Tam. 4 N. 65 E. 8 lks.
Tam. 5 N. 40 W. 10 lks.
647 Tam. 3 S. 16 W. 6 lks.
Spruce 4 S. 66 E. 9 lks.
Land level & wet. Soil 3d rate.
Timber: Tamarac, Spruce & Cedar.
Undergrowth, the same.

East on a random line between Sections 1 & 12.
Var. 9 degrees 40 minutes E.

40.00 Set temp. ¼ Sec. Cor.

80.12 Intersect East boundary 20 lks N. of the Cor. to Sections 1 & 12
648 from which corner I run
N. 89 degrees 51 minutes W. on a true line between Sections 1 & 12.

40.06 Set a post for ¼ Section Corner from which
Cedar 10 N. 15 W. 26 lks.
Spruce 8 S. 76 W. 21 lks.

80.12 The Corner to Sections 1, 2, 11 & 12.
Land level & wet. Soil 3d rate.
Timber: Tamarac, Spruce & Cedar.
Undergrowth, the same.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

The line between Sections 2 & 11 will strike "Cedar Island Lake" in less than 80.00 chains, I therefore run it west on a true line between Sections 2 & 11.

Var. 9 degrees 40 minutes E.

80.00 Interesect S. E. shore of Cedar Island Lake brs. N. E. & S. W.

Set a post for Cor. to fractional Sections 2 & 11 649
from which
Cedar 5 N. 42 E. 19 lks.
Spruce 8 S. 38 E. 29 lks.
The corner to Secs. 2, 3, 10 & 11 is in the lake & cannot be set.
Land level & wet. 3d rate.
Timber: Spruce, Tamarac & Cedar.
Undergrowth, the same

North on a random line between sections 1 & 2.

Var. 9 degrees 40 minutes E.

37.00 Creeks 6 lks runs west. 650
40.00 Set temp ¼ Sec. Cor.
58.00 Leave Swamp brs N. E. & S. W.
80.35 Intersect north boundary 28 lks. West of Corner to Sections 1 & 2.
from which corner I run
S. 0 degrees 12 minutes West on a true line between Sections 1 & 2.
40.35 Set a post for ¼ Section Corner from which
Tam. 6 N. 32 E. 18 lks.
Spruce 7 S. 20 W. 24 lks.
80.35 The corner to sections 1, 2, 11 & 12.
Land level. Solid 3d rate.
Timber: Spruce, Tamarac, Cedar, Birch, Aspen & Pine. 651
Undergrowth, the same.

North between sections 34 & 35.

Var. 10 degrees 20 minutes 20 E.

7.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ Section Cor. from which
Tam. 3 N. 50 W. 11 lks.

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Tam. 3 N. 65 E. 14 lks.

80.00 Set a post for corner to sections 26, 27, 34 & 35 from which.

Tam. 7 N. 50 E. 18 lks.
Spruce 9 N. 20 W. 10 lks.
Spruce 10 S. 60 W. 19 lks.
Tam. 4 S. 10 E. 14 lks.

652 Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Cedar, Birch.
Undergrowth, the same.

East on a random line between sections 26 & 35.
Var. 10 degrees E.

40.00 Set temp. ¼ Sec. Cor.
53.00 Leave swamp brs. N. E. & S. W.
79.86 Intersect N. & S. line 35 lks north of Cor. to Secs. 25, 26, 35 & 36.
from which corner I run
N. 89 degrees 45 minutes W. on a true line between Sections 26 & 35.

653
39.93 Set a post for ¼ Section Corner from which
Tam. 4 N. 37 W. 20 lks.
Spruce 6 S. 32 E. 10 lks.
79.86 The corner to Sections 26, 27, 34 & 35.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Cedar, Birch & Aspen.
Undergrowth the same.

June 21st, 1876.

N. between Secs. 26 and 27.
Var. 10 degrees E.

654 40.00 Set a post for ¼ Section Cor. from which
Spruce 8 N. 52 W. 18 lks.
Tam. 5 N. 45 E. 9 lks.
80.00 Set a post Cor. to Sections 22, 23, 26 & 27 from which
Cedar 8 N. 25 E. 36 lks.
Spruce 10 N. 54 W. 17 lks.
Spruce 5 S. 72 W. 40 lks.
Tam. 3 S. 24 E. 18 lks.
Land level. Soil 3d rate.

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Timber: Spruce, Tamarac & Cedar.
Undergrowth, the same.

East on a random lien between sections 23 & 26.
Var. 10 degrees E.

40.00 Set temp ¼ Sec. Cor.
47.50 Creek 5 lks. runs S. E.
79.68 Intersect N. & S. line 40 lks. N. of Cor. to Sects. 23, 24, 25 & 26. 655
from which corner I run
N. 89 degrees 43 minutes W. on a true line between Sections 23 & 26.
39.84 Set a post for ¼ Section Corner from which
Cedar 4 N. 11 W. 26 lks.
Spruce 6 S. 75 E. 9 lks.
79.68 The corner to sections 22, 23, 26 & 27.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac & Cedar.
Undergrowth the same.

656

North between Sections 22 & 23.
Var. 10 degrees 10 minutes E.

15.00 Leave swamp brs. N. E. & S. W.
33.00 Enter swamp brs. N. W. & S. E.
40.00 Set a post for ¼ Sec. Cor. from which
Spruce 10 N. 11 W. 21 lks.
Spruce 7 S. 28 E. 3 lks.
73.50 Leave swamp brs. N. E. & S. W.
80.00 Set a post for Cor. to Sections 14, 15, 22 & 23 from which
Cedar 8 N. 82 E. 11 lks.
Birch 12 N. 50 W. 16 lks.
Birch 4 S. 65 W. 8 lks. 657
Spruce 10 S. 22 E. 19 lks.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Cedar, Birch & Aspen.
Undergrowth, the same and Fir.

East on a random line between sections 14 & 23.
Var. 9 degrees 50 minutes E.

6.00 Enter swamp brs. N. E. & S. W.

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35.00 Leave swamp brs. N. E. & S. W.
40.00 Leave swamp brs. N. & S.
79.90 Set temp. ¼ Sec. Cor.
Intersect N. & S. line 32 lks. South of Cor. to Sections 13, 14, 23
& 24 from which corner I run
S. 89 degrees 46 minutes W. on a true line between Sections 14 & 23.
658
39.95 Set a post for ¼ Section Cor. from which
Spruce 8 N. 59 W. 18 lks.
Birch 10 S. 18 W. 10 lks.
79.90 The corner to Sections 14, 15, 22, & 23.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Cedar & Aspen.
Undergrowth, the same & Fir.

North between Sections 14 & 15.
Var. 10 degrees E.

33.00 Creek 6 lks runs S. W.
659
40.00 Set a post for ¼ Section Cor. from which
Fir 4 N. 70 W. 9 lks.
Fir 3 N. 56 E. 11 lks.
80.00 Set a post Cor. to Sections 10, 11, 14 & 15, from which
Cedar 6 N. 9 E. 12 lks.
Birch 14 N. 82 W. 15 lks.
Cedar 8 S. 38 W. 30 lks.
Aspen 12 S. 40 E. 27 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Aspen, Cedar, Tamarac & Cedar.
Undergrowth, Aspen, Pine, Fir & Aspen.
660

East on a random between Sections 11 & 14.
Var. 10 degrees E.

11.00 Enter swamp brs. N. & S.
40.00 Set temp. ¼ Sec. Cor.
79.85 Intersect N. & S. line 22 lks. South of Cor. to Sects. 11, 12, 13 & 14
from which corner I run
S. 89 degrees 51 minutes West on a true line be-

Subdivision of Township 57 N. Range 17 W. 4th P. M.

tween Sections 11 & 14.

39.92 Set a post for ¼ Sec. Cor. from which
Spruce 3 N. 35 W. 18 lks.
Tam. 6 S. 30 W. 14 lks.

79.85 The Corner to Sections 10, 11, 14 & 15.
Land level. Soil 3d rate.
Timber: Tamarac, Spruce, Cedar, Birch, Aspen & Maple.
Undergrowth, the same. 661

North between Sections 10 & 11.
Var. 10 degrees E.

12.50 Stream 25 lks runs S. W.
25.00 Enter Swamp brs. N. E. & S. W.
40.00 Set a post for ¼ Sec. Cor. from which
Spruce 5 S. 74 W. 9 lks.
Spruce 8 S. 50 E. 11 lks.
47.00 Leave Samp brs. N. E. & S. W.
55.00 South shore of Cedar Island Lake brs. E. & W.
Set apost for Cor. to fractional Sects. 10 & 11 from which 662
Cedar 8 S. 65 E. 28 lks.
Tam. 5 S. 20 W. 12 lks.
Lake extends from this point north across the Twp line.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Aspen, Cedar & Tamarac.
Undergrrowth, the same.

June 22, 1876.

North between Sections 33 & 34.
Var. 10 degrees 15 minutes E. 663

27.50 Creek 6 lks runs S. E.
40.00 Set a post for ¼ Sec. Cor. from which
Birch 4 N. 36 W. 26 lks.
Aspen 10 N. 45 E. 14 lks.
60.00 Enter swamp brs. N. E. & S. W.
80.00 Set a post corner to Sections 27, 28, 33 & 34 from which
Cedar 5 N. 30 E. 45 lks.
Cedar 10 N. 68 W. 55 lks.

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Cedar 5 S. 20 W. 15 lks.
Spruce 4 S. 70 E. 35 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Aspen, Tamarac & Cedar.
Undergrowth, Aspen, Fir, Pine & Alder.

East on a random line between Sections 27 & 34.
Var. 10 degrees E.

664

16.50 Leave swamp brs. N. E. & S. W.
39.50 Creek 5 lks. runs S. W.
40.00 Set temp. ¼ Sec. Cor.
46.00 Enter swamp brs. N. & S.
80.42 Intersect N. & S. line 60 lks. N. of Cor. to Sects. 26, 27, 34 & 35
from which corner I run
N. 89 degrees 34 minutes W. on a true line between Sections 27 & 38.
40.21 Set a post for ¼ Sec. Cor. from which
Cedar 5 N. 40 W. 20 lks.
665 Spruce 4 S. 18 E. 29 lks.
80.42 The corner to Sections 27, 28, 33 & 34.
Land level. Soil 3d rate.
Timber: Spruce, Birch, Tam., Cedar & Aspen.
Undergrowth, the same & Fir.

North between Sections 27 & 28.
Var. 9 degrees 50 minutes E.

40.00 Set ap ost for a ¼ Sec. Cor. from which
Cedar 10 N. 45 W. 10 lks.
Spruce 4 N. 56 E. 4 lks.
54.00 Leave swamp brs. N. E. & S. W.
666 65.00 Stream 25 lks runs S. W.
80.00 Set a post for Corner to Sections 21, 22, 27 & 28 from which
Aspen 4 N. 56 E. 11 lks.
Aspen 3 N. 30 W. 40 lks.
Birch 10 S. 46 W. 10 lks.
Tam. 10 S. 36 E. 24 lks.
Land generally level. Soil 3d rate.
Timber: Spruce, Tam., Birch, Cedar & Aspen.
Undergrowth, the same.

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East on a random line between Sections 22 & 27.
Var. 9 degrees 35 minutes E.

7.50 Stream 25 lks. wide runs S. W.
39.00 Enter swamp brs. N. E. & S. W.
40.00 Set temp. ¼ Sec. Cor.
80.12 Intersect N. & S. line 24 lks N. of Cor. to Sections 22, 23, 26 & 27 from which corner I run N. 89 degrees 50 minutes W. on a true line between Sections 22 & 27. 667
40.06 Set a post for ¼ Sec. Cor. frrom which
Cedar 10 S. 80 E. 15 lks.
Spruce 12 N. 45 W. 17 lks.
80.12 The corner to Sections 21, 22, 27 & 28.
Land level. Soil 3d rate.
Timber: Tamarac, Spruce, Cedar, Birch & Aspen.
Undergrowth, the same.

North between Sections 21 & 22.
Var. 9 degrees 40 minutes E. 668

15.00 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ Sec. Cor. from which
Tam. 6 N. 50 E. 14 lks.
Tam. 8 N. 45 W. 26 lks.
61.50 Leave swamp brs. N. E. & S. W.
80.00 Set a post for Corner to Sections 15, 16, 21 & 22, from which
Birch 4 N. 42 W. 24 lks.
Fir 3 N. 30 E. 36 lks.
Fir 5 S. 20 E. 30 lks.
Birch 6 S. 80 W. 19 lks.
Land level. Soil 3d rate. 669
Timber: Spruce, Tam., Birch, Cedar & Aspen.
Undergrowth, the same & Fir.

East on a random line between Sections 15 & 22.
Var. 9 degrees 30 minutes E.

25.00 Stream 25 lks. runs South.
40.00 Set temp. ¼ Sec. Cor.
79.76 Intersect N. & S. line 48 lks. South of Cor. to Sects. 14, 15, 22 & 23 from which corner I run

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S. 89 degrees 39 minutes West on a true line between Sections 15 & 22.

39.88 Set a post for ¼ Sec. Cor. from which
Fir 5 S. 20 W. 10 lks.
Fir 3 N. 38 W. 15 lks.

79.76 The corner to Sections 15, 16, 21 & 22.
Land rolling. Soil 3d rate.
670 Timber: Birch, Tam., Spruce, Aspen & Cedar, mostly fire killed.
Undergrowth, the same & Fir.

North between Sections 15 & 16.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ Sec. Cor. from which
Birch 18 N. 70 E. 102 lks.
Birch 5 N. 38 W. 115 lks.

44.00 Enter swamp brs. N. E. & S. W.

80.00 Set a post for Corner to Sections 9, 10, 15 & 16 from which
671 Cedar 10 N. 60 E. 45 lks.
Cedar 6 N. 46 W. 34 lks.
Tam. 8 S. 35 W. 12 lks.
Tam. 6 S. 75 E. 40 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, Tamarac, Spruce, Cedar, Aspen & Maple.
Undergrowth, Aspen, Fir & Alder.
June 23d, 1876.

East on random line between Sections 10 & 15.
Var. 9 degrees 40 minutes E.

672 40.00 Set temp. ¼ Sec. Cor.

63.00 Leave swamp brs. N. E. & S. W.

72.00 Stream 25 lks. runs S. W.

80.10 Intersect N. & S. line 20 lks. South of Corner to Sections 10, 11, 14 & 15 from which corner I run
S. 89 degrees 51 minutes W. on a true line between Sections 10 & 15

40.05 Set a post for ¼ Sec. Cor. from which
Tam. 3 S. 31 W. 10 lks.
Tam. 5 N. 80 W. 15 lks.

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80.10 The corner to Sections 9, 10, 15 & 16.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Cedar & Birch.
Undergrowth, the same, Aspen & Fir.

North between Sections 9 & 10.
Var. 9 degrees 35 minutes E.

15.00 Leave swamp brs. E. & W. 673
40.00 Set a post for ¼ Sec. Cor. frrom which
Cedar 10 N. 80 W. 50 lks.
Tam. 12 N. 35 E. 42 lks.
46.40 Set a post on south shore of Cedar Island Lake for corner to fractional sections 9 & 10 from which
Cedar 5 S. 50 E. 26 lks.
Birch 8 S. 42 W. 15 lks.
The point for corner to sections 3, 4, 9 & 10 falls in the Lake and cannot be set.
Land rolling. Soil 3d rate.
Timber: Birch, Tamarac, Spruce, Cedar & Nor- 674
way Pine.
Undergrowth, the same & Blk Alder.

The point for corner to sections 3, 4, 9 & 10 being in the Lake I begin at the corner to Sections 3 & 4 on the north boundary of the Township and run south on a true line between Sections 3 & 4.
Var. 9 degrees 30 minutes E.

26.10 Set a post on north shore of Lake for Corner to fractional sects. 3 & 4 from which
Birch 6 N. 54 E. 25 lks.
Birch 10 N. 60 W. 18 lks. 675
From this point the flag in line between Sections 8 & 9 on south shore of Lake bears S. 0 degrees 15 minutes E.
To ascertain the distance across the lake on this line I run a base N. 82 E. 15.00 chains to a point from which the flag in line on south shore bears S. 9 degrees 10 minutes West I find the distance across the lake to be 87.60 chains.
Land rolling. Soil 3d rate.

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Timber: Birch, Spruce, Tam., Aspen, Cedar, Maple & Pine.
Undergrowth, the same.

North between Sections 32 & 33.
Var. 10 degrees E.

676

40.00 Set post for ¼ Sec. Cor. from which
Spruce 4 N. 10 E. 16 lks.
Spruce 3 N. 64 W. 18 lks.

80.00 Set a post for corner to Sections 28, 29, 32 & 33 from which
Cedar 5 N. 60 E. 23 lks.
Tam. 3 N. 32 W. 19 lks.
Tam. 3 S. 58 W. 10 lks.
Spruce 5 S. 23 E. 14 lks.
Lan dlevel. Soil 3d rate.
Timber: Spruce, Tam. & Cedar.
Undergrowth, the same.

677

East on a random line between Sections 28 & 33.
Var. 10 degrees E.

40.00 Set temp. ¼ Cec. Cor.

79.82 Intersect N. & S. line 72 lks. N. of Cor. to Sections 27, 28, 33 & 34 from which corner I run
N. 89 degrees 29 minutes W. on a true line between Sections 28 & 33.

39.91 Set a post for ¼ Sec. Cor. from which
Tam. 4 N. 50 E. 26 lks.
Tam. 3 S. 46 E. 19 lks.

79.82 The corner to Sections 28, 29, 32 & 33.
Land level & wet. Soil 3d rate.

678

Timber: Small Spruce, Tamarac & Cedar.
Undergrowth the same.

North between Sections 28 & 29.
Var. 9 degrees 50 minutes E.

5.00 Leave swamp brs. E. & W.

25.00 Stream 25 lks. runs S. W.

39.00 Enter swamp brs. E. & W.

40.00 Set post for ¼ Sec. Cor. from which

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Cedar 4 N. 55 W. 11 lks.
Spruce 4 N. 80 E. 90 lks.
80.00 Set a post for Cor. to Sections 20, 21, 28 & 29 from which
Spruce 8 N. 25 E. 18 lks.
Spruce 4 N. 85 W. 10 lks.
Spruce 4 S. 60 W. 14 lks.
Tam. 3 S. 46 E. 17 lks. 679
Land level & wet. Soil 3d rate.
Timber: Spruce, Tamarac & Cedar.
Undergrowth, the same.

June 24, 1876.

East on a random line between Sections 21 & 28.
Var. 9 degrees 50 minutes E.

40.00 Set temp. ¼ Sec. Cor.
72.40 Leave swamp brs. N. E. & S. W.
79.90 Intersect N. & S. line 43 lks. N. of Cor. to Sects. 21, 22, 27 & 28 from which corner I run
N. 89 degrees 42 minutes West on a true line between Sections 21 & 28 680
80.95 Set a post for ¼ Sec. Cor. from which
Tam. 3 N. 80 E. 5 lks.
Tam. 4 S. 55 W. 6 lks.
79.90 The corner to sections 20, 21, 28 & 29.
Land level & wet. Soil 3d rate.
Timber: Spruce, Tamarac & Cedar.
Undergrowth, the same.

North between Sections 20 & 21.
Var. 9 degrees 45 minutes E.
681
13.50 Creek 5 lks. runs south west.
40.00 Set a post for ¼ Sec. Cor. from which
Tam. 5 N. 18 E. 42 lks.
Tam. 5 N. 45 W. 36 lks.
68.00 Creek 6 lks. runs S. West.
80.00 Set post for Cor. to Sects. 16, 17, 20 & 21 from which
Cedar 6 N. 43 E. 21 lks.
Cedar 5 N. 60 W. 23 lks.
Spruce 5 S. 65 W. 33.

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Spruce 3 S. 20 E. 40 lks.
Land level. Soil 3d rate.
Timber: Tamarac, Spruce & Cedar.
Undergrowth the same.

East on a random line between Sections 16 & 21.
Var. 9 degrees 40 minutes E.

682
10.00 Creek 5 lks runs S. West.
40.00 Set temp. ¼ Sec. Cor.
74.50 Leave swamp brs. N. & S.
80.32 Intersect N. & S. line at the corner to Sections 15, 16, 21 & 22.
from which corner I run
West on a true line between Sections 16 & 21.
40.16 Set a post for ¼ Sec. Cor. from which
Tam. 8 N. 29 W. 38 lks.
Tam. 5 S. 60 E. 48 lks.
80.32 The corner to Sections 16, 17, 20 & 21.
Land level. Soil 3d rate.
683 Timber: Tamarac, Spruce & Cedar.
Undergrowth, the same.

North between Sections 16 & 17.
Var. 9 degrees 40 minutes E.

40.00 Set a post for ¼ Sec. Cor. from which
Spruce 4 N. 25 W. 8 lks.
Tam. 3 S. 70 E. 16 lks.
80.00 Set a post for Cor. to Sects. 8, 9, 16 & 17 from which
Cedar 10 N. 45 E. 50 lks.
Cedar 4 N. 56 W. 38 lks.
Cedar 6 S. 70 W. 45 lks.
684 Tam. 10 S. 12 E. 34 lks.
Land level & wet. Soil 3d rate.
Timber: Spruce, Tamarac & edar.
Undergrowth the same.

East on a random line between Sects. 9 & 16.
Var. 9 degrees 35 minutes E.

40.00 Set temp. ¼ Sec. Cor.
80.28 Intersect N. & S. line 48 lks. South of corner to

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Sections 9, 10, 15 & 16 from which corner I run S. 89 degrees 39 minutes W. on a true line between Sections 9 & 16.

40.14 Set a post for ¼ Sec. Cor. from which
Cedar 5 N. 40 E. 15 lks.
Tam. 4 S. 80 E. 12 lks.

80.38 The corner to Sections 8, 9, 16 & 17.
Land level & wet. Soil 3d rate. 685
Timber: Tamarac, Cedar & Spruce.
Undergrowth the same.

North between Sections 8 & 9.
Var. 9 degrees 40 minutes E.

25.00 Leave swamp bears N. E. & S. W.
32.50 Creek 6 lks. runs East.
40.00 Set post for ¼ Sect. Cor. from which
Birch 10 N. 27 W. 35 lks.
Birch 14 N. 50 E. 26 lks.
80.00 Set a post for corner to Sections 4, 5, 8 & 9 from which 686
Fir 6 N. 64 E. 18 lks.
Fir 4 N. 50 W. 26 lks.
Cedar 5 S. 41 W. 15 lks.
Birch 10 S. 20 E. 20 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar, Tamarac, Aspen & Maple.
Undergrowth, Aspen & Fir.

The line between Sections 4 & 9 runs into "Cedar Island Lake" in less than 80.00 chains, I therefore run it 687
East on a true line between Sections 4 & 9.
Var. 9 degrees 35 minutes E.

12.10 Set a post on the West shore of Cedar Island Lake for
Corner to fractional Sections 4 & 9 from which
Fir 4 N. 65 W. 34 lks.
Birch 6 S. 26 W. 44 lks.
Land rolling. Soil 3d rate.
Timber: Birch, Cedar, Spruce, Aspen, Tamarac

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& Maple.
Undergrowth, Fir & Aspen.

North on a random line between Sections 4 & 5.
Var. 9 degrees 35 minutes E.

6.40 Creek 10 lks. runs East.
40.00 Set temp. ¼ Sec. Cor.
80.24 Intersect north boundary 35 lks. East from the
688 Cor. to Sections 4 & 5 from which corner I run
S. 0 degrees 15 minutes E on a true line between Sections 4 & 5.
40.24 Set a post for ¼ Sect. Cor. from which
Birch 14 N. 80 W. 42 lks.
Aspen 10 N. 30 E. 56 lks.
80.24 The Corner to Sections 4, 5, 8 & 9.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar, Aspen, Tamarac, & Maple.
Undergrowth, Fir, Aspen & Alder.
June 26, 1876.

689 ---

North beteen Sections 31 & 32.
Var. 9 degrees 30 minutes E.

40.00 Set a post for ¼ Sec. Cor. from which
Birch 6 N. 30 W. 10 lks.
Fir 4 N. 15 E. 20 lks.
57.00 Stream 25 lks runs West.
80.00 Set a post for corner to Sections 29, 30, 31 & 32 from which.
690 Aspen 3 N. 40 E 12 lks.
Aspen 3 N. 70 W. 8 lks.
Aspen 4 S. 40 W. 16 lks.
Aspen 4 S. 10 E. 10 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, Tam., Spruce, Aspen & Maple mostly killed by fire. Undergrowth, Aspen, Fir & Alder.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

East on a random line between Sections 29 & 32.
Var. 9 degrees 35 minutes E.

27.50 Stream 25 lks. runs S. West.
40.00 Set temp. ¼ Sec. Cor.
52.50 Enter Tamarac swamp brs. N. E. & S. W.
79.76 Intersect N. & S. line 33 lks. South of the Corner to Sects. 28, 29, 32 & 33.
from which corner I run 691
S. 89 degrees 46 minutes West on a true line between Sections 29 & 32.
39.88 Set a post for ¼ Sec. Cor. from which
Fir 4 N. 28 W. 30 lks.
Spruce 5 S. 60 W. 18 lks.
79.76 The corner to Sections 29, 30, 31 & 32.
Land level. Soil 3d rate.
Timber: Birch, Spruce, Tamarac, Aspen & Maple.
Undergrowth the same & Fir.

West on a random line between Sections 30 & 31.
Var. 9 degrees 10 minutes E. 692

27.00 Enter swamp brs. N. E. & S. W.
40.00 Set temp. ¼ Sec. Cor.
60.40 Intersect West Boundary 52 lks. South of Cor. to Sects. 30 & 31.
40.46 Set post for ¼ Sec. Cor. from which
Cedar 12 S. 70 E. 25 lks.
Cedar 8 N. 15 W. 10 lks.
80.46 The corner to Sections 29, 30, 31 & 32.
Land level. Soil 3d rate.
Timber: Spruce, Birch, Tam., Aspen & Cedar.
Undergrowth the same & Fir.

693

North between Sections 29 & 30.
Var. 9 degrees 20 minutes E.

22.50 Enter swamp brs. N. E. & S. W.
40.00 Set a post for ¼ Sec. Cor. from which
Tam. 10 N. 56 E. 11 lks.
Tam. 4 N. 80 W. 14 lks.
80.00 Set a post for corner to Sections 19, 20, 29 & 30 from which
Cedar 4 N. 80 W. 25 lks.

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Tam. 5 N. 42 E. 17 lks.
Tam. 8 S. 58 E. 25 lks.
Tam. 3 S. 71 W. 35 lks.
Land level. Soil 3d rate.
Timber: Tamarac, Spruce, Cedar & Birch.
Undergrowth, the same & Fir.

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694 East on a random line between Sections 20 & 29.
Var. 9 degrees 20 minutes E.

40.00 Set temp. ¼ Sec. Cor.
62.00 Creek 5 lks. runs South.
80.25 Intersect N. & S. line 68 lks. N. of Cor. to Sects. 20, 21, 28 & 29
from which corner I run
N. 89 degrees 31 minutes West on a true line between Sections 20 & 29.
40.12 Set a post for ¼ Sec. Cor. from which
Tam. 5 N. 75 E. 8 lks.
Tam. 4 S. 42 W. 8 lks.
695 80.25 The Corner to Sections 19, 20, 29 & 30.
Land level. Soil 3d rate.
Timber: Tamarac, Spruce & Cedar.
Undergrowth the same.

West on a random line between Sections 19 & 30.
Var. 9 degrees E.

40.00 Set temp. ¼ Sec. Cor.
45.00 Creek 10 lks. runs South.
80.45 Intersect W. boundary 37 lks. North of Cor. to Sections 19 & 30
from which corner I run
696 N. 89 degrees 44 minutes E. on a true line between Sections 19 & 30.
40.45 Set post for ¼ Sec. Cor. from which
Spruce 10 N. 21 E. 34 lks.
Birch 4 S. 35 W. 50 lks.
90.45 The corner to Sections 19, 20, 29 & 30.
Land level. Soil 3d rate.
Timber: Tam., Spruce, Cedar & Birch. Undergrowth the same.

June 28, 1876.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

North between Sections 19 & 20.
Var. 9 degrees 20 minutes E.

40.00 Set a post for ¼ Sec. Cor. from which
Spruce 8 N. 34 W. 40 lks.
Cedar 8 N. 65 E. 27 lks.
53.00 Creek 10 lks. runs S. West.
80.00 Set a post for Cor. to Sections 17, 18, 19 & 20 from which 697
Tam. 10 N. 51 E. 30 lks.
Tam. 12 N. 80 W. 46 lks.
Spruce 8 S. 10 W. 35 lks.
Tam. 14 S. 36 E. 60 lks.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac & Cedar.

East on a random line between Sections 17 & 20.
Var. 9 degrees E.

40.00 Set a post for temp. ¼ Sec. Cor.
79.86 Intersect N. & S. line 52 lks. N. of Corner to Sects. 16, 17, 20 & 21 698
from which corner I run
N. 89 degrees 38 minutes on a true line between Sections 17 & 20.
39.93 Set post for ¼ Sec. Cor, from which
Spruce 4 S. 20 E. 65 lks.
Spruce 6 N. 58 W. 40 lks.
79.86 The corner to Sections 17, 18, 19 & 20.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac & Cedar.
Undergrowth the same.

699

West on a random line between Sections 18 & 19.
Var. 9 degrees E.

40.00 Set temp. ¼ Sec. Cor.
70.00 Leave swamp brs. N. W. & S. E.
80.30 Intersect W. boundary 67 lks. S. of Cor. to Sects. 18 & 19.
from which corner I run
S. 89 degrees 31 minutes E. on a true line between Sects. 18 & 19.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

40.30 Set a post for ¼ Sec. Cor. from which
Cedar 10 N. 50 W. 41 lks.
Cedar 4 S. 62 E. 60 lks.

80.30 The corner to Sections 17, 18, 19 & 20.
Land level. Soil 3d rate.
Timber: Spruce, Tamarac, Cedar & Birch.
Undergrowth the same & Alder.

700

North between Sections 17 & 18.
Var. 9 degrees 20 minutes E.

27.50 Creek 6 lks. runs S. West.

40.00 Set a post for ¼ Sec. Cor. from which
Tam. 4 N. 12 E. 18 lks.
Tam. 3 N. 42 W. 16 lks.

80.00 Set a post for Cor. to Sects. 7, 8, 17 & 18 from which
Spruce 5 N. 50 E. 27 lks.
Spruce 6 N. 85 W. 14 lks.
Tam. 10 S. 60 E. 15 lks.
Land level & et. Soil 3d rate.
701 Timber: Spruce, Tamarac & Cedar.
Undergrowth the same.

East on a random line between Sects. 8 & 17.
Var. 9 degrees E.

20.00 Creek 4 lks. runs South.

40.00 Set temp. ¼ Sec. Cor.

41.00 Leave swamp brs. N. W. & S. E.

61.20 Enter swamp brs. N. E. & S. W.

80.30 Intersect N. & S. line 60 lks of Cor. to Sects. 8, 9, 16 & 17
702 from which corner I run
S. 89 degrees 34 minutes West on a true line between Sects. 8 & 17.

40.15 Set a post for ¼ Sec. Cor. from which
Tam. 8 N. 20 W. 35 lks.
Spruce 6 S. 78 W. 45 lks.

80.30 Corner to Sections 7, 8, 17 & 18.
Land level. Soil 3d rate.
Timber: Spruce, Tam., Cedar, Birch & Aspen.
Undergrowth the same.

Subdivision of Township 57 N. Range 17 W. 4th P. M.

West on a random line between Sects. 7 & 18.
Var. 9 degrees E.

40.00 Set temp. ¼ Sec. Cor.
50.50 Leave swamp brs. N. E. & S. W.
79.60 Intersect W. boundary 30 lks. N. of Cor. to Sects. 7 & 18.
from which corner I run
N. 89 degrees 47 minutes E. on a true line between Sects 7 & 18. 703
39.60 Set a post for ¼ Sec. Sor. from which
Cedar 6 N. 28 E. 14 lks.
Cedar 10 S. 58 W. 19 lks.
79.60 The corner to Sections 7, 8, 17 & 18.
Land level. Soil 3d rate.
Timber: Spruce, Tam., Cedar, Birch & Aspen.
Undergrowth the same & Alder.

North between Sections 7 & 8.
Var. 9 degrees E.
704
40.00 Set a post for ¼ Sec. Cor. from which
Tam. 3 N. 73 W. 18 lks.
Spruce 3 N. 22 E. 25 lks.
41.30 Leave swamp brs. E. & W.
60.00 Creek 6 lks. runs East.
80.00 Set a post for Cor. to Sections 5, 6, 7 & 8 from which
Aspen 10 N. 65 E. 37 lks.
Aspen 6 N. 40 W. 48 lks.
Aspen 7 S. 43 W. 45 lks.
Aspen 4 S. 70 E. 10 lks.
Land slightly rolling. Soil 3d rate.
Timber: Birch, Spruce, Tam., Cedar & Aspen. 705
Undergrowth the same & Fir.
June 29, 1876.

East on a random line between Sects 5 & 8.
Var. 9 degrees 20 minutes E.

40.00 Set temp. ¼ Sec. Cor.
80.32 Intersect N. & S. line 38 lks. S. of Cor. to Sects. 4, 5, 8 & 9

Subdivision of Township 57 N. Range 17 W. 4th P. M.

from which corner I run
S. 89 degrees 44 minutes W. on a true line between Sects. 5 & 8

40.16 Set a post for ¼ Sec. Cor. from which
Birch 7 N. 63 W. 36 lks.
Fir 5 S. 25 E. 19 lks.

80.32 The corner to Sections 5, 6, 7 & 8.

706 Land rolling. Soil 3d rate.
Timber: Birch, Cedar, Spruce, Aspen, Tam., & Maple.
Undergrowth Aspen, Fir & Alder.

West on a random line between Sections 6 & 7.
Var. 9 degrees 15 minutes E.

40.00 Set temp ¼ Sec. Cor.
79.65 Intersect W. boundary line 46 lks N. of Cor. to Sects. 6 & 7.

39.65 Set a post for ¼ Sec. Cor. from which
edar 18 S. 80 W. 20 lks.
707 Birch 12 N. 32 W. 34 lks.

79.65 The corner to Sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, Aspen, Fir & Alder.

North on a random line between Sections 5 & 6.
Vor. 9 degrees 30 minutes E.

40.00 Set temp. ¼ Sec. Cor.
80.33 Intersect N. boundary line 27 lks. of Cor. to Sects. 5 & 6.
from which corner I run
708 S. 0 degrees 12 minutes W. on a true line between Sections 5 & 6.

40.33 Set a post for ¼ Sect. Cor. from which
Birch 14 S. 60 E. 21 lks.
Birch 10 N. 72 W. 26 lks.

80.33 The corner to Sections 5, 6, 7 & 8.
Land rolling. Soil 3d rate.
Timber: Birch, Spruce, Cedar, Aspen & Maple.
Undergrowth the same, Fir & Alder.

Field Notes of the meanders of a Lake in Section 18.

Beginning at the Corner to fractional Sects. 13 & 18 on the north shore of the lake, and run thence in Sec. 18, as follows:
N. 72 E. 4.00 chains.
N. 15 E. 9.00 chains.
N. 42½ E. 8.00 chains.
S. 81½ E. 10.00 chains.
S. 52½ E. 8.00 chains.
S. 19½ E. 16.00 chains. 709
S. 9 W. 8.00 chains. A creek 8 lks. runs N. W. into lake.
S. 44 W. 2.00 chains.
S. 73½ W. 6.00 chains.
S. 63 W. 15.00 chains.
S. 69 W. 5.00 chains.
S. 77 W. 7.40 chains. Corner to fracts. 13 & 18 on Shore of the lake.
The land about this lake is generally lo w& wet. 3d rate.
Timber: Spruce, Tamarac, Cedar, Birch & Pine.
June 30th, 1876. 710

Meanders in Township 57 N. Range 17 W 4th P. M.

Field notes of the "Meanders of Cedar Island Lake."

Beginning at the corner to fractional Sections 3 & 34 in the North boundary of the townships & run thence in Section 3 as follows:

S. 38½ W. 23.00 chains.
S. 63 W. 13.00 chains.
S. 82 W. 15.00 chains. To the corner to fractional 3 & 4 thence in fractional Sec. 4 as follows: 711
S. 86 W. 10.00 chains.
S. 61½ W. 17.00 chains.
S. 71½ W. 3.20 chains.
N. 67½ W. 21.00 chains.
N. 10 W. 4.00 chains.
N. 73½ W. 7.50 chains.
S. 43½ W. 10.00 chains.
S. 25 W. 12.00 chains.
S. 13 E. 18.00 chains.

Meanders in Township 57 N. Range 17 W. 4th P. M.

S. 21½ W. 17.50 chains. Creek 10 lks. runs E. into Lake.
S. 10½ E. 6.10 chains. To Cor. to fractional Sects. 4 & 9 thence in Section 9 as follows:
S. 10½ E. 7.00 chains.
S. 35 E. 25.00 chains. Creek 6 lks. run N. E. into Lake.
712 S. 67 E. 20.00 chains.
S. 72 E. 15.00 chains.
S. 84½ E. 8.00 chains.
N. 64½ E. 13.45 chains. Cor. to fractional Sects 9 & 10, thence in section 10 as follows:
N. 59 E. 20.00 chains.
N. 42 E. 27.00 chains.
N. 75 E. 9.00 chains.
S. 47 E. 6.20 chains.
S. 19¼ E. 8.80 chains.
S. 49 E. 12.00 chains.
S. 68½ E. 12.00 chains.
713 N 88 E. 8.70 chains. To Cor. to fractional Sects. 10 & 11.
Thence in Section 11 as follows:
N. 88 E. 6.25 chains.
S. 60½ E. 2.50 chains.
South 4.00 chains.
S. 48 E. 2.00 chains. Stream 25 lks runs South out of lake.
N. 58½ E. 5.00 chains.
N. 25 E. 10.00 chains.
N. 44 3-4 E. 5.00 chains.
N. 55 E. 27.60 chains to Cor to fractional Sects 2 & 11.
714 Thence in Section 2 as follows:
N. 44½ E. 5.00 chains.
N. 22 E. 13.00 chains.
N. 45 E. 12.00 chains.
N. 56½ E. 10.00 chains.
N. 38 E. 6.00 chains.
N. 7½ chains W. 7.00 chains.
N. 4 3-4 E. 17.00 chains.
N. 13 W. 5.00 chains.
N. 22½ W. 8.00 chai,ns.

Meanders in Township 57 N. Range 17 W. 4th P. M.

N. 58 W. 13.00 chains.
S. 87¼ W. 10.00 chains.
S. 41 W. 15.00 chains.
S. 66½ W. 3.60 chains.
N. 75 W. 2.50 chains.
N. 52 W. 5.00 chains.
N. 19¼ E. 5.00 chains.
N. 35¼ W. 3.80 chains.
N. 78½ W. 5.50 chains. 715
N. 23 W. 3.20 chains to the Cor. to fractional Sects. 2 & 35 in the northern boundary of the township.
Land slightly rolling. Soil 3d rate.
Timber: Spruce, Tam., Birch, Cedar, Aspen, Maple and Pine.

June 27th, 1876.

GENERAL DESCRIPTION.

There is no land in this township above 3d rate quality, and a very large portion of the whole is swamp land and very wet. The timber is Spruce, 716
Tamarac, Birch, Cedar, Aspen & Maple with scattering Pine about the Lake in the Northern portion. Nearly all the timber except that in the Northern tier of sections has been killed by fire, and much of it has fallen. On all the high land there is a dense growth of Aspen, Fir & Norway Pine, from 6 to 20 feet high.

SURVEYOR GENERAL'S OFFICE,
St. Paul, Minn., May 24, 1895.

I hereby certify that I have carefully compared the foregoing field notes of the surveys of the Ex- 717
terior, subdivision and meander lines of Township 57 N. Range 17 W. 4th P. M. Minnesota, with the original field notes of said Exterior, subdivision and meander lines, as returned to this office by the U. S. Deputy Surveyor, and that the same is a true copy and correct copy of said original field notes on file in this office.

JOHN COMPTON,
Surveyor General.

COMPLAINANT'S EXHIBIT "E 1."

718 State of Minnesota,

County of St. Louis.—ss.

I, the undersigned, Ray W. Nichols, County Surveyor of said County, do hereby certify that I have compared the copy of record of the field notes and the calculations of the survey of Township Fifty-seven (57) North of Range Seventeen (17) West in said St. Louis County, from pages 1 to 23, both inclusive, in the annexed book and Plats one (1) to sixteen (16) both inclusive in the annexed book, with the original records of said field notes and calculations of said survey now of record in the office of the County Surveyor afore-
719 said, and that the same is a true copy thereof, and the whole of said original field notes and calculations of said survey; that said original field notes are now in my custody as such County Surveyor, and that said survey was made pursuant to the authority of the County Commissioners of said County, a certified copy of the resolution of the Board of County Commissioners under and by the authority of which said survey was made is annexed hereto.

In testimony whereof I have hereunto signed my name and affixed my official signature this 9th day of January, A. D. 1899, and that I have no official seal.

720 R. W. NICHOLS,
County Surveyor of
St. Louis Co., Minn.

March 8-1894.

Survey of T 57 N-R 17 W.

I commenced on true line North side Sec. 6 between
Cor. to Sec. 5 & 6 and ¼ Cor. North side Sec. 6 and
run West on same line to a point 539.6 fe. North of
Cor. 1 6 31-36 angle to Cor. 90 degrees & measured
2546.8 East from said point to ¼ Cor. gas pipe
monument found B. T-s standing, then measured
E.
2613.7 to Cor. to Sec. 5 & 6 found post & B. T's 721
standing continuing East on same line br 2 degrees E. 2587.5
to a point 335.5 ft. South of ¼ North side Sec. 5
angle
2587.5 90 degrees on same line found post & B. T's standing
2628.5 2628.5
858.9

5241.89

792.5
494

298.5
2592.5
Angle 6°34
N83° 26′ E 722
Dist 26 09 6

2592.5
25.8 to a point 494 ft South of Cor to Sec. 4 & 5 I found

2566.7

2595.8 423.8
Tam'k — 2.6266483
3.4141836

9.2134607
9° -15-49
N86°-44′ E

post & B. T's in good preservation.
2595.8 to a point 792.5 South of ¼ post North side Sec. 4
5187.8 I found post & B. Ts standing 723
to a point 1215.8 ft South of Cor. to 3 & 4-57-17 I
found post & B Ts all standing.
Continuing on same line East.
2040.0 intersection of random line ith D. M. & N. Ry centre
line, angle to right 38 degrees 05 minutes
4080 enter Cedar Island Lake.
6123.8 to a point 439 ft North of meander Cor. to fractional

Sec. 2 & 35 angle 90 degrees I found post & B. Ts standing.

6310 Leave Cedar Island Lake & enter hardwood bush.
1186 to a point 373 North of ¼ Cor. North side Sec. 2-57-17. angle 90 degrees to corner. Measured distance across
374 Lake on true line between Meander Cors. is 1986 ft.
112.7 Meander Cor. on North side of Lake was set by
260.3 J. W. Silliman.
724 2718 to a point 112.7 North of cor. to Sec. 1 & 2-57-17 & 35 & 36-58-17 angle 90 degrees to said corner I found post & B. Ts O K.
2613.3 to a point 115.4 South of ¼ cor North side Sec. 1-57-17 located Cor. from B. Ts found standing
2636.6 to a point 386.3 South of cor. to Tps 57 & 58 N. Ranges 16 & 17 W.
155.4 found post & B. Ts standing angle to corner 90 degrees.
386.3
230.9

	145	30928.2		2546.8	
	17725	186.8		2613.7	
	322.25	30741.4		2587.5 –	5201.2
725				2628.5 –	7829.7
			2	2592.5 –	10422.2
	161.25	538.3		2595.3 –	13017.5
		32049.4	6123 –	6310	19327.5
		84.5		1186	20513.5
				2618	23131.5
		32672.2		2613.3	25741.8
				2637.6	28881.4
				30938.2E	
				31594 S	21391.5

Commencing at Tps cors 57 & 58 Ranges 16 & 17 run
726 South on a random line Var 7 degrees 30 minutes E.
700 Enter swamp bears E. & W.
2624
2652.6 to a point 50.5 ft West of ¼ Cor. East side Sec. 1
5276.6
13 angle 90 degrees found post & B Ts standing
5289.6 to a point 107 West of Cor to Sec 1 & 12 on East
387.28
4902.3 Exterior line angle to cor 90
Found post & B T's standing

2640 to a point 145 ft West of ¼ cor East side Sec 12
2625.12 found post & B Ts standing.
5265.12

175°48′
5253.12
89°48′161.25

1400 Leave swamp bears E. & W.
2640 to a point opposite where Sec Cor should be but
2650.25 could

5250.25 2640 727
2625.12 2650.25 177.5 2640
145 2610.25
5250.25 161.25 2625.12
2625.12—161.25

not find the cor to Secs 12 & 13.
1600 enter swamp bears N. W.
2610.25 to a point 177.5 West of ¼ Cor E side Sec 13
angle 90 degrees.
Found post & B Ts standing br S E.
510 Leave swamp bears E. & W.
920 Enter swamp bears N. E. & N. W. 728
2000 Leave swamp bears E. & W.
2641.5 to a point 163 ft West of cor to Sec 13 & 24.
found post & B Ts standing.
2640 to a point opposite where ¼ cor East side Sec 24.
ought to be did not find post or cor.
460 Enter swamp brs E & W.
1520 Leave swamp brs E & W.
2000 Enter swamp brs N. E. & S. W.
2640.5 to a point 145 ft West of cor to Secs 24-25 19 &
30 found post & two B T's standing
400 Leave swamp brs E & W.
1320 Creek 8' wide N W & S E.
1445 Creek 12' wide runs S. W. 729
1595 Creek 15' wide runs S E.
1770 North bank St. Louis River.
1880 South bank St. Louis River.
River runs S. 70 degrees W.
2645 West point West of where ¼ cor East side of Sec.
25 ought to be—corner is obliterated.
1650 enter swamp bears E & W.
2620.5 to a point 75 ft West of cor to Sec 25 & 36-57-17.
found B Ts standing.

West from cor to Sec 25 & 36 on a random line angle
90 degrees br 8 degrees E.
2640 hub for temporary ¼ cor.
2077 to a point 109 ft South of meander cor on left bank of St. Louis River cor to fractional Sec 25 & 36.
2210 to left bank of St. Louis River bears N. E. & S. W.
2350 to rigt bank of St. Loouis River.
2581 to a point 118 ft South of cor to Sec 25-26-35 & 36. angle 90 degrees—I found post & B Ts standing
730 South on random line between Secs 35 & 36.
600 right bank St. Louis River bears S 60 W.
652 to a point 41 ft East of Meander cor right bank St. Louis river cor to fractional Sec. 35 & 36 br 8 degrees.
Located corner from W. Pine 18 minutes N 23 degrees E 6 lks found standing
775 Left bank St. Louis river
1600 Enter swamp bears E. & W.
2600 Leave swamp bears E. & W.
2640 hub for temporary ¼ cor
731 This corner is obliterated—
2599.2 to a point 153.5 East of cor to Secs 35 & 36 angle 90 found corner O K.
2602.7 to a point on South line passing through to Sec 35 & 36.
West on South Exterior line commnecing at cor to Secs 35 & 36.
2657.5 hub. (corner not definite)
Ver. 8 degrees.
905 to a point 6.5 ft South of meander cor on left bank of St. Louis River angle 90 found B T's standing
1029.5 to a point 7.3 ft South of M. C. on right bank of St. Louis River angle 90 degrees found B T's standing
732 River bears N. 5 E.
2583 to a point 15 ft South of Cor. to Sec. 35 & 34 located
5240.5 cor frrom old B T's found standing I found post
153.5 set by a surveyor 47 ft W & 12 ft North of where I make
6394 corner.
100 entered swamp N W & S W.
2637.5 to a point 18.5 South ¼ cor South side sec 34.
7768 found post & B Ts standing.

Continuing West on same line

2627.5
2626
2640
2595.5
21.8
10510.8

2100 leave swamp.
2626 to a point 1.5 ft South of or to Sec 33 & 34. 733
10494 found B Ts standing & located corner frrom there

2640
2595.5
5285.5
21.6
5257.1

2640 to a point opposite to where ¼ cor ought to be, did not find said cor.
160 enter swamp brs N. E.
2595.5 to a point 20 ft South of Cor to Sec 32-33-57-17 734
15729.5 located cor from B Ts stumps standing in place.
7824 Set post—established new B Ts as follows.
Tam 4 minutes N 47 E mag 36 lks.
Tam 3 minutes N. 53 W mag 24 lks.

2640
2640
2544
7824
2608
2667
5275 735

2640 hub for temporary ¼ cor did not find cor or B Ts saw no evidence of old line
1700 leave swamp S W & N E.
hub for temporary cor to Secs 31 & 32 no evidence at this point of post. Bts or old line
344 to a point 111 ft south of ¼ cor South side of
28553.5 Sec 31—Located corner from B T's found standing B.

Ash N 42 W.

2667 to a point 84.5 south of cor

26220.5 to Sec 31 & 36 between Range 17 & 18.

2657.5	2667	111	2640
2583	2544	20	2640
2627.5	2640	—	2544
2626	—	3)91	—
2640	1049	30⅓	7824
2595.5		111	—
2640		—	2608
736 2640		80⅔	5316
2544			28
2667			—
—			5188
26220.5			21.6
153.5			—
—			5166.4

North on random line commencing at Cor to Sec 31 &

36 between ranges 17 & 18 br 6 degrees E.

75 Stream 20 ft wide brs S W & N E.

865 Stream 20 ft wide brs S E & N E.

2640 Hub for temporary ¼ cor West side Sec 31—No

737 sign of cor or B Ts or line at this point.

2640 Hub for temporary cor to Secs 30 & 31.

1050 Enter swamp brs E & W.

1225 Leave swamp brs E & W.

2640 Hub for ¼ corner West side Sec 30.

550 Enter swamp N. E. & S. W.

650 Stream 20 ft. wide runs S. W.

2640 Hub for temporary cor. to Sec. 19 & 30-br 8 degrees E.

750 Leave swamp brs E. & W.

2270 Enter swamp brs N E & S W.

2600 Leave swamp brs N E & S W.

738 2640 Hub for temporary ¼ cor W. side Sec 19.

150 enter swamp N W & S E.

500 leave swamp brs E & W.

2841.5 to a point 162 ft East of Cor to Sec 18 & 19 found post & two B Ts.

796 to a point 132.7 East of M. C. on South shore of lake

which I re-established as follows:

Spruce 5 minutes S 9 degrees mag 106¼ lks.

Spruce 5 minutes S 30 degrees E mag 95 lks.

Spruce 5 minutes N 13 degrees E mag 18 lks.

Spruce 4 minutes N 46 degrees W. mag 12 lks.

2640.2 North shore of lake.

established M C.

Spruce 5 N 13 30 E 18

Spruce 4 N 46 W 12 L.

2640.2 Enter swamp E & W.

2760 to a point 57.7 East of ¼ cor West side of Sec 18.

found post & B Ts standing 11 E. Sec 18, 19, 13 & 24.

Spruce 4 minutes S 47 degrees E. mag 18 lks.

Tam 5 minutes S 27 degrees W mag 37 lks. 739

Poplar 5 minutes N 23 degrees E mag 19 lks.

Poplar N 81 degrees E mag 40 lks.

500 Leave swamp.

1541 D M & N Ry angle left 89 degrees 14 minutes.

2616.5 to a point 82 ft west of cor to Sec 7 & 18 found cor standing br 10 degrees E.

2689.2 to a point 91.2 West of ¼ cor

Must have set ¼ S on line midway. West side Sec 7 br 11 degrees E.

Established new B Ts as follows:

Poplar 6 S 57 30 E mag 17 lks.

W. Birch 5 N 22 E mag 16 lks.

2689.2 to a point 100.5 ft West of cor to Sec 6, 7-1-12 740

found post and B Ts standing br 11 degrees E.

2025 Stream 15 ft wide runs S W.

2626 to a point 111 ft West of ¼ cor

-80

25'52" West side Sec 6 br 10 degrees E.

2627 to apoint 46.5 ft East of cor to Tps 57 & 58 Ranges 17 & 18.

2627
2626 - 3253
2689.2- 7942.2
2689.2-10631.4
2616.5-13247.9
2760 -16007.9
2841.5-18849.4 741
2640 -21489.4
2640 -24129.4
2640 -26769.4
2640 -29409.4
2640 -32049.4

049.4
32

Subdivision of 57-17.

commencing at cor.

Sta° to Sec 6 & 7 on west side of Town and running East
br 12 degrees.

0 to 1 2640 hub.
1854.4 hub opposite new corner

1 - 2 2640 hub.

5280

2 - 3 2640 hub.

7920

742 2283–10203 ft.

3 ▲ 255 stream 12 ft wide runs S.

7920 38005

3 ▲ 2283 D M & N Ry angle 36 minutes 26' left.

10203 1 min. 39'

–10560

3 - 4 2640 tack in Aspen stump.

10560

4 - 5 2684.6 hub West shore of Lake.

13244.6

743

5 - 6 2604.35 hub East shore of Lake.

15848.95

6 - 7 1421 hub.

17.270

7 ▲ 2050 enter swamp.

17270

7 - 8 2568.5 hub on West shore of Lake.

19838.5

8 - 9 1044.89 hub on East shore of lake.

744 20883.4

9 ▲ 232 stream 25' runs N. E.

21.115.4

9 ▲ 437 stream 25' runs N. E.

21320

9 - 10 2148.7 hub.

10 ▲ 650 enter

10 - 11 2461.6 hub.

11 - 12 1777.4 hub.

12-13 1345.5
13-14 2124.3 intersection of random lines.
14 a 107.0 hub at 90 degrees to cor to secs 1 & 12 18 ft South of cor.

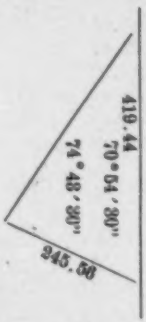
10560				
2684.6				
7604.35				
5421				
2568.5				
1044.9				
2148.7				745
2461.6	30740.84			
1777.4	100.5			
1345.5			110.97	
2124.3	30841.35	—	82	
	193.97			
30740.84	30648.37		192.97	
107	406.21			
			244.96	
30847.84	31054.58 meas.		161.25–why–?	

	1 Given 31700.46				
Sec. 7-18	32700.46	31054.58	: :	5268.6	5146.56
" 8-17	"	"	: :	5299.8	5191.82
" 9-16	"	"	: :	5298.48	5190.53
" 10-15	"	"	: :	5286.6	5178.89
" 11-14	"	"	: :	5270.1	5162.63
" 12-18	"	"	: :	5291.88	5184.06
				31700.46	31054.59

746

Commencing at a point 5 ft south of cor to secs 5 & 6
on Town line and run south between Sec 5 & 6.
0-1 2640 hub on line.
1-2 2640 hub not on line.
2 a 360.55 intersection of random lines.
2-3 2640 hub on line. 747
7920
3 a 1447.6 D M & N Ry angle 55 degrees R.
9367.6
3-4 2640 hub (small fir stump)
not on line.
4 a 1535 stream 10' runs S W.
4 a 1635 stream 10' runs S E.
4 a 1683 stream 20' runs S 15 degrees W.

4 ▲ 1760 stream 20' runs S. E.
4 - 5 2640 hub not on line.
5 ▲ 655 stream 6 ft runs S E.
5 ▲ 1800 enter swamp brs S W & N E.
5 ▲ 2065 leave swamp brs N W & S E.
5 - 6 2640 hub not on line.
6 ▲ 1020 enter swamp brs N E & S W.
6 ▲ 1830 leave swamp brs E & W.
6 - 7 2640 hub on line.
7 ▲ 236.2 hub on line for triangulation.
748 7 ▲ 325 to shore of lake.
7 ▲ 655.64 hub on line South side.
of Lake.



18805–Shore
7 & 236.2–18716.2

	18.480
	2640
	2640
	2640
	6033
	32433
	20
Sec. Cor.	32413

749

7 - 8 2640 hub not on line.
8 - 9 2640 hub on line.
9 ▲ 460 enter swamp brs N W & E.
9 - 10 2640 hub not on line.
10 ▲ 1330 leave swamp brs N E & S W.
10 - 11 6033 to intersection of random.

26400 6

32433–Sc ft–32353.4

750 line south of Town line.
Established cor to Sec 31 & 32.
South side of 57-17 from which
Poplar 4 minutes N 35 mag 19 ft.
Poplar 5 minutes N 67 W mag 29 ft.

	2640
	2640
	2558.44
	2721.56
	1301
	11861.00

North & South line between Secs 4 & 5 commencing
at a point on random line 495 ft South of cor Sec. 4 & 5 on Town line N. Range 17 & running South.

0-1 2640 hub on line.

1-2 2640 hub on line.

55° 00
2▲ 641.7 D M & N Ry angle 54 degrees 55 right.
0° 05′

5921.7

751

2▲ 703.8 intersection of random lines.

5983.8

2-3 2558.44 hub on line.

3▲ 1300 enter swamp.

3▲ 2000 leave swamp.

−10560

3-4 2721.56 hub on line.

−11861 −11911

4▲ 1301 hub 50 ft North of North shore of St. Mary's Lake.

10560

752

4-5 2674.82 hub on North shore of Lake.

13234.82

5▲ 90.65 hub on South side of point & North shore of

13325.47
13234.82

Lake.

5▲ 2331.41 hub on South Shore of Lake.

15,566.23

5-6 2798.83 hub.

6-7 2808.83 tack in aspen stump not on line.

753

7▲ 450 enter swamp brs E. & W.

7▲ 1050 leave swamp brs N W & S E.

7▲ 1825 enter swamp brs N W & S E.

7▲ 2400 leave swamp brs N W & S E.

7-8 2902.5 hub on line.

8-9 2700 hub on line.

9-10 3026 hub on line.

10▲ 666.2 hub on line.

10▲ 710 to north shore of lake.

11▲ 1500 enter swamp brs E & W.

11 ♣ 3211.6 hub intersection of random line South side 57-17

2040 32681.75
2040 495
2558.44 ——— —
2221.56 32186.75 93°9985°
2674.82 634.96
2798.83 ——— 183° 82.23
2808 6)31551.9
2903.5 5258.63 90°15 10610.6
2700 0°15 15
3026
3211 6 6)31649.38
5275
32681.75 450.64 21.34
32681.75 20
33153.73 (6 32661.75
30847.84
25707.48
657.88
31038.06 5140.36

9951.44E-43-9947.14
521.54S
83.125
4.3W
10610.6E
46.3S 31.3S
15N

1° 12½E 10610.6
94° 12½E 9947.14
Call 94010
663.5
31°551.8

754

31685.94 given distance E & W line.
755 30847.84 measured distance E & W line.

838.10

Sec. 6 given 5256.9 propl dist 5117.85.
Sec 5 given 5301.12 propl dist 5160.90.
Sec 4 given 5280 propl dist 5140.34.
5140.36

Sec 2 given 5280 propl dist 5140.34.
Sec 1 given 5287.92 propl dist 5148.05.
25707.48
30846.84

756 North & South line—

Given.	Measured.	Proportl.
	31701.18	
31701.18	32352.4	
	651.22 Surplus	
Bet 5 & 6 5301.78		5410.6
5280		5388.36
5280		5388.36
5280		5388.36

5280 5388.36
5280 5388.36
East & West Line—
No 2—162.15 or W.
No 4—281.25 or W.
No 6—429.86 or W.
No 9—323.91 or W.
No 11—206.13 or E.
N & S Line—
No 2—130.60.
No 4—238.96. 757
No 6—347.32.
No 8—455.68.
No 10—564.04.
Line between 4, 5, 8, 9, 16, 17—

Given	Measured	Given	Proptl
31693.86	32658.05	5293.86	5454.90

32658.05 — 31693.86 = 964.19
494.7 — 32658.05 = 32163.35
20 — 32678.05 = 494.7
32183.35 — 32183.35 = 20

5280 5440.63 758

No 2 174.9.
No 4 335.53.
No 6 302.51.
No 8 32.64.
No 10 252.73.
Corner to Secs 5, 6-7 & 8-57 17.
B. Ash 4 N 22 degrees E mag 15 ft.
B. Ash 6 N 63 degrees W mag 24.8 ft.
B. Ash 6 S. 47 degrees E mag 4.8 feet.
B. Ash 5 S 50 degrees W mag 31.6 ft.
Corner to Secs 4, 5, 8, 57-17.
Birch 8 minutes S 88 degrees E. mag 36 ft. 759
Maple 7 minutes S 41 degrees W mag 25 ft.
Linden 5 minutes N 55 degrees W mag 67 ft.

Cedar 8 minutes N 31 degrees E mag 52.7 ft.

488°00	1215.8	270.16	1214.18	943.97		63.63
273°00	5162	.55	32183.35	33127.32		5154.93
180°	32183.35		2294	33150.26	5257.1	
30"15	5257.1			33148.76		
6"00	15				4.3	
3"00	82.24	82.13	603.66N			
273"00	9965.1	521.53	31579.69		5218.56	
	32183.35		31625.55		38.54	
90.15	10510.6	45.86	15 10510.6			
				9951.44	9947.14W	
			6)31610.55–5268.4		563.46E	

760

Here notes are meagre in that

(1). Directions given North, South, East & West. to not state any method to show that lines were run in those directions & in fact they were not but merely in an easterly direction etc as the case may be. (N. W. line approx S. 87 15 minutes E.

(2). No angles are given at Tp corner or where direction changes.

(3). Distances in the body of the notes across Tp do not agree with summary line on page 19 etc with distances for same line on page 22. This same line at its intersection with the south body shows no angle with that body and gives no dist. to the cor 32 & 33.

761

In default of any showing of direction take distances as opposite page 24 (same as exhibit)

On page 20 is there a sta worked 11? if so how long?

762

COMPLAINANT'S EXHIBIT "E."

Offered in evidence on page 170.

(Com. Exhibit E.)

Auditor's Office, St. Louis County,
Duluth, Minn., Feb. 7th, 1894.

The Board of County Commissioners met at two o'clock p. m. this day, pursuant to call.

All members being present.

..... 763

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In the matter of the re-survey of Township fifty-seven (57), Range seventeen (17), St. Louis County, Minn.

To the Honorable, the Board of County Commissioners, St. Louis County, Minn.

Gentlemen: We, the undersigned residents of said county, and property owners, lessees, or otherwise interested in Township fifty-sevn (57), Range seventeen (17), said county, respectively petition your honorable body to cause the County Surveyor to make a re-survey of said township.

We make this request for the reason that the quarter corners and section numbers in the interior of the town and except on township and range lines have become obliterated and are absent from said town, and it is absolutely impossible under the present condition therein existing to define with any certainty the limits of property therein situate. 764

Your petitioners further show that important explorations are now being made by various owners of or by option, lease or otherwise on said lands, for the discovery of iron ore or mineral deposits therein contained.

That owing to the condition of the lack of proper descriptions of said lands, as above stated, much confusion and uncertainty have arisen and are likely to arise in the future, and to avoid this and to further and encourage the work of said explorations so that parties engaged in said work of exploration may have the fullbenefit of their holding and labors therein without any collisions, disputes or legal complications liable to arise if such re-survey be not made, and believing it for the true interest of all concerned, as well as the county at large, 765

Your petitioners ask that your honorable body will order such re-survey to be made at once and make such provision as may be necessary to cause said work to be done correctly

and expeditiously, and your petitioners will ever pray, etc.

Dated, Duluth, Minnesota, January 2d, 1894.

David T. Adams, J. C. Foley, James T. Hale, Richard Schell, Alfred Merritt, John Helmer, Jessie Norton, L. B. Manley, J. H. James, R. H. Palmer, Geo. W. Buck, Coffin & Warner, J. E. Merritt, E. C. Gridley, John D. Stryker.

On motion, the petition was accepted, and the county surveyor was instructed to locate section corners in said township 57-17 according to law.

766 .....

.....

On motion, the Board adjourned until 9:30 o'clock a. m. next day.

February 8th, 1894.

The Board of County Commissioners met at 9:30 a. m. this day, pursuant to adjournment.

All members present.

On motion, the Board adjourned.

Approved:

C. POIRIER,
Chairman Board County Commissioners.

767 Attest:

GEO. N. LA VAQUE,
County Auditor.

STATE OF MINNESOTA,)
County of St. Louis.)

I, O. Halden, county auditor of the said County of St. Louis, and by virtue of my said office, clerk of the Board of County Commissioners of said county, and custodian of the records of said Board, do hereby certify that I have compared the annexed copy of the record of a resolution, and on proceedings relating thereto, of the Board of County Com-
768 missioners aforesaid with the original record thereof now of record in my said office in the county aforesaid, and that the same is a true copy thereof, and of the whole of said original record of said resolution.

In testimony whereof, I have hereunto affixed the seal of the office of said county auditor and signed my name this 9th day of January, A. D. 1899.

O. HALDEN,
County Auditor of the County of St. Louis, State of Minnesota.

(Official Seal.)

COMPLAINANT'S EXHIBIT "F."

Offered in evidence on page 183.

THE UNITED STATES TO ADDISON G. PETRIE.

The United States of America, to all to whom these presents shall come, greeting:

Homestead Certificate No. 1006.)
Application 1540.)

Whereas there has been deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that, 769
pursuant to the Act of Congress approved 20th May, 1862, "to secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of Addison G. Petrie has been established and duly consummated, in conformity to law, for the lot numbered one of section three, the lot numbered eight of section four, and the lot numbered four of section nine, in township fifty seven north, of range seventeen west, of the Fourth Principal Meridian in Minnesota, containing ninety-five acres ad eighty-five hundredths of an acre, according to the official plat of the said land, returned to the General Land Office by the surveyor general.

Now know ye, that there is, granted by the United States 770
unto the said Addison G. Petrie, the tract of land above described: To have and to hold the said tract of land, with the appurtenances thereof, unto the said Addison G. Petrie and to his heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, president of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of February, in the year of our Lord one thousand eight hundred and eighty-two, and of the independence of the United States the one hundred and sixth. 771

By the President:

CHESTER A. ARTHUR.

By WM. H. CROOK, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

Recorded, Vol. 3, Page 1.

OFFICE OF REGISTER OF DEEDS,)
County of St. Louis.)

I hereby certify that the within patent was filed in this

office for record on the 10th day of April, A. D. 1883, at 2 o'clock p. m., and was duly recorded in Book B of Patents, page 577.

J. A. MANNHEIM,
Register of Deeds.
By ....., Deputy.

COMPLAINANT'S EXHIBIT "G."

Offered in evidence on page 183.

772 Book A of Powers, page 350.

ADDISON G PETRIE TO C. B. CHANDLER.

POWER OF ATTORNEY.

Filed for record June 24th, A. D. 1880, at 12 m.

Know all men by these presents, that I, Addison G. Petrie, of the County of Wright, State of Minnesota, do hereby make, constitute and appoint Columbus B. Chandler, of the County of Kent, State of Michigan, my true and lawful attorney, hereby authorizing and empowering my said attorney to sell, upon such terms as to him shall seem meet, any lands which I now own, either in law or equity,
773 and obtained by me as an "additional homestead," under the provisions of Section 2306 of the Revised Statutes of the United States, and to sell any of such lands as I may hereafter acquire under such acts, and to receive the purchase money, or other consideration therefor, and upon such sale, to make, sign, seal and deliver in my name all such deeds or other assurances in the law therefor as to him shall seem meet and necessary. And I further authorize and empower my said attorney to receive, accept, and take possession of all lands hereinbefore mentioned, and to prosecute and defend, at his own cost, any suit or action respecting the same or for the breach of any contract in relation thereto, or for any trespass thereupon, or injury thereto, of any nature or
774 description whatsoever.

And my said attorney is hereby authorized to sell said lands, or any interest therein, and to make any contract in relation thereto, which I might make if present; and to receive for his own use and benefit any moneys or other property the proceeds of the sale of said lands, or any intesest therein, or arising from any contract in relation thereto, or received or recovered for any injury thereto; and I hereby release to my said attorney all claim to any of the proceeds of such sale, lease, contract or damages. And I

further authorize my said attorney to appoint a substitute or substitutes to perform any of the foregoing powers. And in consideration of the sum of Two Hundred Dollars, lawful money, to me in hand paid by the said Columbus B. Chandler, the receipt whereof is hereby acknowledged, this power of attorney, and each and every power contained herein, is made and hereby declared to be irrevocable by me or in my name or otherwise. The lands hereinbefore referrd to are the following, viz.:

Lot N. one (1), Section 3; Lot No. eight (8), Section 4; and Lot No. four (4), Sec. 9, Township No. 57 N. of Range No. 17 W., in the County of St. Louis, State of Minnesota, containing 95 85-100, more or less, according to the government survey thereof. Hereby ratifying and confirming all that my said attorney or his substitute may lawfully do or cause to be done by virtue of these presents. In witness whereof, I, the said Addison G. Petrie,and Henrietta, the wife of said Addison G. Petrie, in token of her release of all rights of dower and homestead exemption in the premises, have hereunto set our hands and seal this 30th day of November, A. D. 1879. 775

ADDISON G. PETRIE. (Seal.)
HENRIETTA PETRIE. (Seal.) 776

Signed, sealed and delivered in presence of
S. CHASE.
W. CHILDS.

STATE OF MINNESOTA,)
County of Wright.)

On this 30th day of November, A. D. 1879, before me, clerk of court, personally appeared Addison G. Petrie, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. Also personally came before me Henrietta Petrie, wife of said Addison G. Petrie, party to the foregoing instrument, and being first fully made acquainted with the contents of the same, in an examination separate and apart from her said husband, acknowledged that she executed the same freely, and signed and sealed the relinquishment of dower in and to whatever estate she may have in the premises, without compulsion or undue influence from her hus- 777

band. In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

GEO. A. HOFFMAN,
Clerk of Court,
Wright Co., Minn.

(Official Seal.)
STATE OF MINNESOTA,)
County of St. Louis.)

778 I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book A of Powers, on page 350. That I have compared such copy with the original record, and that it is acorrect transcript therefrom.

Dated this 11th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds,
By R. O. LOE, Deputy.

COMPLAINANT'S EXHIBIT "H."

779 Offered in evidence on page 184.

A. G. PETRIE AND WIFE TO P. M. GRAFF AND D. E. LITTLE.

Filed for record June 24th, A. D. 1880, and recorded in Book "L" of Deeds, page 548.

This indenture, made this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and eighty, between Addison G. Petrie and Henrietta Petrie, his wife, of the County of Wright, State of Minnesota, party of the first part, and Philip M. Graff and Daniel E. Little, of the County of Kent, State of Michigan, parties of the second part.

780 Witnesseth, that the said parties of the first part, in consideration of the sum of One Hundred Dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to-wit:

Lot No. one (1), Section three (3); Lot No. eight (8), Section four (4), and Lot No. four (4), Section nine (9), Township

No. 57 N. of Range No. 17 West; containing ninety-five and 85-100 acres (95 85-100), or less, according to the government survey thereof.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said parties of the second part, their heirs and assigns, forever. And the said Addison G. Petrie and Henrietta Petrie, his wife, parties of the first part, for their heirs, executors and administrators, do covenant with the said parties of the second part, their heirs and assigns, that they are well seized in fee of the lands and 781
premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

ADDISON G. PETRIE. (Seal.)
HENRIETTA PETRIE. (Seal.) 782
By COLUMBUS B. CHANDLER, (Seal.)
Attorney in Fact. (Seal.)

Signed, sealed and delivered in presence of
T. H. PRESSNELL,
JOHN McKINLEY,
Witnesses.

STATE OF MINNESOTA,)
County of St. Louis.)

I, Luther Mendenhall, a notary public within and for said county, do hereby certify that on this 26th day of May, A. D. 1880, personally came before me Columbus B. Chand- 783
ler, attorney in fact of Addison G. Petrie and Henrietta Petrie, to me well known as the same person described in and who executed the foregoing deed, and acknowledged that he executed the same freely and voluntarily as and for the act and deed of the said Addison G. Petrie and Henrietta Petrie.

LUTHER MENDENHALL,
Notary Public,
Saint Louis County, Minn.

(Notarial Seal.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book L of Deeds, on page 548. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated, this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
784 By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "I."

Offered in evidence on page 184.

The United States of America, to all to whom these presents shall come, greeting:

Homestead Certificate No. 1004.)
Application 1538.)

Whereas there has been deposited in the General Land Office of the United States a certificate of the register of the
785 Land Office at Duluth, Minnesota, whereby it appears that, pursuant to the Act of Congress, approved 20th May, 1862, "to secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of Henry Koecher has been duly established and duly consummated, in conformity to law, for the lot numbered two, of section three, and the lot numbered one, of section four, in township fifty-seven north, of range seventeen west, of the Fourth Principal Meridian in Minnesota, containing one hundred and five acres and thirty-five hundredths of an acre, according to the official plat of the survey of the said land, returned to the General Land Office by the surveyor general.

786 Now, know ye, that there is, therefore, granted by the United States unto the said Henry Koecher the tract of land above described: To have and to hold the said tract of land with the appurtenances thereof, unto the said Henry Hoecher and to his heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, president of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of February, in the year of our Lord one thousand eight hundred and eighty-two, and of the independence of the United States the one hundred and sixth.

By the President:

CHESTER A. ARTHUR.

By Wm. H. Crook, Secretary.

(Official Seal.)

S. W. CLARK,

Recorder of the General Land Office.

Recorded, Vol. 2, Page 499. 787

OFFICE OF REGISTER OF DEEDS,)
County of St. Louis.)

I hereby certify that the within patent was filed in this office for record on the 10th day of April, A. D. 1883, at 2 o'clock p. m., and was duly recorded in Book B of Patents page 576.

J. A. MANNHEIM,
Register of Deeds,
By ....., Deputy.

(Official Seal.)

788

COMPLAINANT'S EXHIBIT "J."

Offered in evidence on page 184.

UNITED STATES OF AMERICA TO JAMES H. RUTTLE.

Book A of Patents, page 268.
Filed for record April 21st, 1883, at 10 a. m..

PATENT.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, in pursuance of the Act of Congress approved March 3, 1855, entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the militia service of the United States," there has been deposited in the General Land Office Warrant No. 36351, for 80 acres, in favor of Fitch R Hunt, private, Captain Battle's Company Tennessee Militia War, with evidence that the same has been duly located upon the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter of Section ten, in Township fifty-seven north of Range seventeen west of the Fourth Principal Meridian, in the district of lands 789

subject to sale at Duluth, Minnesota, containing eighty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general; the said warrant having been duly assigned to James H. Ruttle as aforesaid, and to his heirs, the tract of land above described: To have and to hold the said tract of land, with the appurtenances thereof, unto the said James H. Ruttle, as assignee of aforesaid, and to his heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, president
790 of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the thirtieth day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and seventh.

By the President:

CHESTER A. ARTHUR.

By O. L. JUDD, Asst. Sec'y.

(Seal.)

S. W. CLARK,

Recorder of the General Land Office.

791 Recorded, Vol. 549, page 488.

STATE OF MINNESOTA,)
County of St. Louis.)

I, R. S. Munger, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office as found in Book A of Patent, on page 268. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 7th day of January, A. D. 1899.

R. S. MUNGER,

Register of Deeds,

792 By S. L. PIERCE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "K."

Offered in evidence on page 184.

The United States of America, to all to whom these presents shall come, greeting:

Certificate No. 2086.

Whereas James H. Ruttle, of St. Louis County, Minne-

sota, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said James H. Ruttle, to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of public lands," and the acts supplemental thereto, for the Lots numbered one and two, of Section ten, in Township fifty-seven north, of Range seventeen west, of the Fourth Principal Meridian, in Minnesota, containing sixty-eight acres according to the official plat of the survey of said 793
lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said James H. Ruttle.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James H. Ruttle, and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said James H. Ruttle, and to his heirs and assigns for- 794
ever.

In testimony whereof, I, Chester A. Arthur, president of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the thirtieth day of March, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and seventh.

By the President:

CHESTER A. ARTHUR.

By O. L. JUDD, Asst. Secretary.

(Official Seal.) 795

S. W. CLARK,

Recorder of the General Land Office.

Recorded, Vol. 5, page 306.

OFFICE OF REGISTER OF DEEDS,)
County of St. Louis.)

I hereby certify that the within patent was filed in this office for record on the 21 day of April, A. D. 1883, at 10

o'clock a. m., and was duly recorded in Book B of Patents, page 307.

J. A. MANNHEIM,
Register of Deeds,
By J. C. VAN NORMAN, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "L."

Offered in evidence on page 184.

796

WARRANTY DEED.

James H. Ruttle to Chas. A. Moore.

Filed for record January 6th, A. D. 1880, at 9 o'clock a. m., and recorded in Book "L" of Deeds, page 410.

This indenture, made this third day of January, in the year of our Lord one thousand eight hundred and eighty, between James H. Ruttle, a single man, of the County of Saint Louis, State of Minnesota, party of the first part, and Charles A. Moore, of the County of Ramsey, State of Minnesota, party of the second part.

Witnesseth, that the said party of the first part, in con-
797 sideration of the sum of three hundred and fifty ($350) dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Loui and State of Minnesota, described as follows, to-wit:

Lots numbered one (1) and two (2) and the South East quarter (S E ¼) of the North West quarter (N W ¼) and the North East quarter (N E ¼) of the South West quarter (S W ¼) of Section No. ten (10) in Township No. fifty-seven (57) N. of Range No. seventeen (17) West of the Fourth (4th) Principal Meridian.

798 To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said James H. Ruttle, party of the first part, for his heirs, executors and administrators, does covenant with the said party of the second part, his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforeaid; that the same are free from all incumbrances, and the above bar-

gained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In testimony whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

JAMES H. RUTTLE.. (Seal.)

Signed, sealed and delivered in presence of
THOMAS H. PRESSNELL, 799
J. R. CAREY,
Witnesses.

STATE OF MINNESOTA,)
County of St. Louis.)

I, J. R. Carey, clerk of the District Court within and for said county, do hereby certify that on this third day of January, A. D. 1880, personally came before me James H. Ruttle, to me well known as the same person described in and who executed the foregoing deed, and he acknowledged that he executed the same freely and voluntarily.

J. R. CAREY,
Clerk of the District Court. 800

(Official Seal.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the record in my office, as found in Book L of Deeds, on page 410. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds. 801
By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "M."

Offered in evidence on page 184.

WARRANTY DEED.

Charles A. Moore and wife to Little and Graff.

Filed for record April 22nd, A. D. 1880, at 12 o'clock m., and recorded in Book "L" of Deeds, page 499.

This indenture, made this 13th day of January, in the year of our Lord one thousand eight hundred and eighty (1880), between Charles A. Moore and May G. Moore (his wife), of Saint Paul, Minnesota, parties of the first part, and Daniel E. Little and Philip M. Graff, parties of the second part.

Witnesseth, that the said parties of the first part, in consideration of the sum of twelve hundred and thirty-two ($1,232) dollars to them in hand paid by the said parties of
802 the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of innesota, described as follows, to-wit: Lots one (1) and two (2) and the South East quarter of the North West quarter and the North East quarter of the South West quarter of Section ten (10) in Township fifty-seven (57) North of Range seventeen West. Also the South West quarter of the North East quarter, and the West half of the South East quarter, and the South East quarter of the South East quarter, all in Section twenty-two (22), Township fifty-eight (58) North of Range seventeen (17)
803 west.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said parties of the second part, their heirs and assigns, forever. And the said Charles A. Moore, one of said parties of the first part, for himself, his heirs, executors and administrators, doth covenant with the said parties of the second part, their heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and
804 premises, in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part

hereunto set their hands and seals the day and year first above written.

CHAS. A. MOORE. (Seal.)
MAY G. MOORE. (Seal).

Signed, sealed and delivered in presence of
EDMUND R. HOLLINSHEAD,
EVE LAMPREY,
Witnesses.

STATE OF MINNESOTA,)
County of Ramsey.) 805

I, a notary public within and for said county, do hereby certify that on this 13th day of January, A. D. 1880, personally came before me, Charles A. Moore and May G. Moore, his wife, to me well known as the same persons described in and who executed the foregoing deed, and duly acknowledged that they executed the same freely and voluntarily.

EDMUND R. HOLLINSHEAD,
Notary Public,
Ramsey County, Minnesota.

STATE OF MINNESOTA,)
County of St. Louis.) 806

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book L of Deeds, on page 499. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "N." 807

Offered in evidence on page 184.

WARRANTY DEED.

Little and Graff to A. R. Macfarlane.

Book O of Deeds, page 287.

This indenture, made this nineteenth day of January, in the year of our Lord one thousand eight hundred and eighty, between Daniel E. Little and Abigail E. Little, his wife, and

Philip M. Graff and Sarah A. Graff, his wife, all of Grand Rapids, County of Kent, and State of Michigan, parties of the first part, and Angus R. Macfarlane, of the Village of Duluth, County of St. Louis, and State of Minnesota, party of the second part.

Witnesseth, that the said parties of the first part, in consideration of the sum of twelve hundred and thirty-two dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the
808 second part, his heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of Saint Louis and State of Minnesota, described as follows, to-wit:

Lots one (1) and two (2) and the South East quarter of the North West quarter and the North Eeast quarter of the South West quarter of Section ten (10) in Township fifty-seven (57) North of Range seventeen (17) West. Also the South West quarter of the North East quarter and the West half of the South East quarter, all in Section twenty-two (22), Township fifty-eight (58) North of Range seventeen (17) West.

To have and to hold the same, together with all the here-
809 itaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said Daniel E. Little and Philip M. Graff, parties of the first part, for themselves, their heirs, executors and administrators, do covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against
810 all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

DANIEL E. LITTLE. (Seal.)
ABIGAL E. LITTLE. (Seal.)
PHILIP M. GRAFF. (Seal.)
SARAH A. GRAFF. (Seal.)

Signed, sealed and delivered in presence of
ALBT. N. SEIP,
GEO. RUPLEY,

Witnesses as to the signature of Daniel E. E. Little.

J. A. SMITH,
H. H. DENNIS,

Witnesses as to the signature of Philip M. Graff and Sarah A. Graff and Abigal E. Little.

811

STATE OF MINNESOTA,)
County of St. Louis.)

I, Albt. N. Seip, a notary public within and for said county, do hereby certify that on this nineteenth day of January, A. D. 1880, personally came before me Daniel E. Little, to me well known as one of the same persons described in and who executed the foregoing deed, and acknowledged that he executed the same freely and voluntarily. The words "and the North East quarter of the South West quarter" in line fifteen being first interlined before signing and acknowledging the said deed. 812

ALBERT N. SEIP,
Notary Public,
St. Louis Co., Minn.

(Notarial Seal.)

STATE OF MICHIGAN,)
County of Kent.)

I, Henry H. Dennis, a notary public within and for said county, do hereby certify that on this twenty-second day of January, A. D. 1880, personally came before me Philip M. Graff, Sarah A. Graff and Abigal E. Little, to me well known as the same persons described in and who executed the foregoing deed and each acknowledged that they executed the same freely and voluntarily, the words "and the North East quarter of the South West quarter" in line fifteen being first interlined before signing and acknowledging the said deed. 813

HENRY DENNIS,
Notary Public,
Kent County, Michigan.

(Notarial Seal.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book O of Deeds, on page 287. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
814 By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "O."

Offered in evidence on page 185.

WARRANTY DEED.

Angus R. Macfarlane to Edmund D. Graff.

815 Filed for record February 10th, 1880, at 9 o'clock a. m., and recorded in Book "L" of Deeds, page 439.

This indenture, made this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eighty, between Angus R. Macfarlane (unmarried), of the Village of Duluth, County of St. Louis, and State of Minnesota, party of the first part, and Edmund D. Graff, of the County of Armstrong and State of Pennsylvania, party of the second part.

Witnesseth, that the said party of the first part, in consideration of the sum of twelve hundred and thirty-two dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby
816 grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to-wit:

Lots one (1) and two (2) and the South East quarter of the North West quarter, and the North East quarter of the South West quarter of Section ten (10) in Township fifty-seven (57) North of Range seventeen (17) West. Also the South West quarter of the North East quarter, and West half of the South East quarter, and the South East quarter

of the South East quarter, all in Section twenty-two (22), Township fifty-eight (58) North of Range seventeen (17) West.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said Angus Macfarlane, party of the first part, for himself, his heirs, executors and administrators, doth covenant with the said party of the second part, his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and hath good right 817
to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises. in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In testimony whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

A. R. MACFARLANE, (Seal.)

Signed, sealed and delivered in presence of 818
ALBT. N. SEIP,
JAS. HUNTER,
Witnesses.

STATE OF MINNESOTA,)
County of St. Louis.)

I, Albt. N. Seip, a notary public within and for said county, do hereby certify that on this twenty-ninth day of January, A. D. 1880, personally came before me Angus R. Macfarlane, to me well known as the same person described in and who executed the foregoing deed, and acknowledged that he executed the same freely and voluntarily.

ALBT. N. SEIP, 819
Notary Public,
St. Louis County, Minn.

(Notarial Seal.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book L of Deeds, on

page 439. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 189.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "P."

820 Offered in evidence on page 185.

Book B of Patents, page 578.

United States of America, to Eric Larson.

PATENT.

Filed for record April 10, 1883, at 2 o'clock p. m.

The United States of America, to all to whom these presents shall come, greeting:

Homestead Certificate No. 1003.)
Application 1537.)

Whereas, there has been deposited in the General Land Office at Duluth, Minnesota, whereby it appears that, pursu-
821 ant to the Act of Congress approved 20th May, 1862, "to secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of Eric Larson has been established and duly consummated in conformity to law, for the lote numbered two, three and four of Section one in Township fifty-seven North of Range seventeen West of the Fourth Principal Meridian, in Minnesota, containing one hundred and twenty acres ad ninety-four hundredths of an acre according to the official plat of the survey of the said land, returned to the General Land Office by the surveyor general.

Now know ye, that there is therefore granted by the United States unto the said Eric Larson the tract of land
822 above described:

To have and to hold the said tract of land, with the appurtenances thereof, unto the said Eric Larson, and to his heirs and assigns, for ever.

In testimony whereof, I, Chester A. Arthur, president of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of February, in the year of our Lord one

thousand eight hundred and eighty-two, and of the inde pendence of the United States the one hundred and sixh.

By the President:

CHESTER A. ARTHUR.

By W. H. COOK, Secretary.

S. W. CLARK,

Recorder of the General Land Office.

(Seal.)

Recorded, Vol. 2, page 498.

823

STATE OF MINNESOTA,)
County of St. Louis.)

I, R. S. Munger, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office as found in Book B of Patents, on page 578. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 7th day of January, A. D. 1899.

R. S. MUNGER,

Register of Deeds.

By S. L. PIERCE, Deputy.

(Official Seal.)

824

COMPLAINANT'S EXHIBIT "Q."

Offered in evidence on page 185.

The United States of America, to all to whom these presents shall come, greeting:

Certificate No. 3397.

Whereas James B. Price, of St. Louis County, Minnesota, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said James B. Price, to the pro visions of the Act of Congress of the 24th day of April, 1820, 825
entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for the North West quarter of the South West Quarter and the lot numbered three of Section eleven and the lots numbered three and four of Section ten in Township fifty-seven North of Range seventeen West of the Fourth Principal Meridian, in Minnesota, containing one hundred and thirty-nine acres ad twenty-six hundredths of an acre according to the official plat of the survey of the said lads, returned to the General

Land Office by the surveyor general, which said tract has been purchased by the said James B. Price.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said James B. Price, and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the
826 said James B. Price, and to his heirs and assigns, forever.

In testimony whereof, I, Grover Cleveland, president of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the third day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and thirteenth.

By the President:

GROVER CLEVELAND.

By M. McKean, Secretary

827 ROBT. W. ROSS,

Recorder of the General Land Office.

(Official Seal.)

OFFICE OF THE REGISTER OF DEEDS,)
State of Minnesota,)
County of St. Louis.)

I hereby certify that the within instrument was filed in this office for record Dec. 2, 1897, at 1:30 p. m., and was duly recorded in Book G of Patents, page 306.

A. LOFGREN,
Register of Deeds.
By S. L. PIERCE, Deputy

828

COMPLAINANT'S EXHIBIT "R."

Offered in evidence on page 185.

WARRANTY DEED.

John McDougall to James B. Price and Wife.
Filed for record January 3, 1884, at 2 o'clock p. m.
Recorded in Book "X" of Deeds, page 215.
This indenture, made this 14th day of June, in the year of

our Lord one thousand eight hundred and eighty-two, between James B. Price and Nellie May Price, his wife, of St. Louis County, and State of Minnesota, parties of the first part, and John McDougall, of St. Louis County and State of Minnesota, party of the second part.

Witnesseth, that the said parties of the first part, in consideration of the sum of four hundred ($400) dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part his heirs and assigns, forever, all those tracts or parcels of 829
land lying and being in the County of St. Louis and State of Minnesota, described as follows: to-wit:

The North West quarter of the South West quarter (N W ¼ of S W ¼) and Lot three (3) of Section eleven (11) and Lots three (3) and four (4) of Section ten (10) in Township fifty-seven (57) North of Range seventeen (17) West of the Fourth Principal Meridian, containing 139 26-100 acres, more or less, according to the goverment survey thereof.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to the said party of the second part, his heirs and assigns, forever. And the said James B. Price and 830
Nellie May Price, parties of the first part, for themselves and their heirs, executors and administrators, do hereby covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written. 831

JAMES B. PRICE. (Seal.)
NELLIE MAY PRICE. (Seal.)

Signed, sealed and delivered:
H. A. CHRISTY,
Witness.

STATE OF MINNESOTA,)
County of St. Louis.)

I, C. E. Bostwick, a notary public within and for said

county, do hereby certify that on this 16th day of August, A. D. 1882, personally came before me James B. Price and Nellie May Price, his wife, to me well known as the person described in and who executed the foregoing deed, and they acknowledged that they executed the same freely and voluntarily.

C. E. BOSTWICK.

(Notarial Seal, St. Louis Co., Minn.)

STATE OF MINNESOTA,)
832 County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book W of Deeds, on page 441. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

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833 COMPLAINANT'S EXHIBIT "S."

Offered in evidence on page 185.

WARRANTY DEED.

John McDougall to C. N. Nelson Lumber Co.
Filed for record January 3, 1884, at 2 o'clock p. m.
Recorded in Box "X" of Deeds, page 215.

This indenture, made this 14th day of June, in the year of our Lord one thousand eight hundred and eighty-three, between John McDougall (a single man), of St. Louis County and State of Minnesota, party of the first part, and C. N.
834 Nelson Lumber Company, a corporation existing under the laws of the State of Minnesota, party of the second part.

Witnesseth, that the said party of the first part, in consideration of the sum of four thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to-wit:

The West half of the South East quarter (W ½ of S E ¼)

and the South half of the South West quarter (S ½ of S W ¼) of Section Fourteen (14), the North East quarter (N E ¼) of ection Twenty (20), and the South half of the North West quarter (S ½ of N W ¼), the outh West quarter of the North East quarter (S W ¼ of N E ¼) and the North West quarter of the South East quarter (N W ¼ of S E ¼) of Section Thirteen (13), all in Township Fifty-eight (58) North of Range Seventeen (17) West of 4th Principal Meridian. Also the North West quarter of the South West quarter (N W ¼ of S W ¼) and Lot Three (3) of Section Eleven (11) and Lots Three (3) and Four (4) of Section Ten, all of Township Fifty- 835
seven (57) North of Range Seventeen (17) West of the 4th Principal Meridian, containing 619 26-100 acres, more or less, according to the government survey thereof.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, its successors, heirs and assigns, forever. And the said John McDougall, party of the first part, for himself and his heirs, executors and administrators, doth hereby covenant with the said party of the second part, its successors and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in man- 836
ner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the party of the second part, its successors, heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In testimony whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

JOHN McDOUGALL. (Seal.)

Signed, sealed and delivered in presence of 837
ANDREW GOWAN,
CHARLES BEAULIEU,
Witnesses.

STATE OF MINNESOTA,)
County of Carlton.)

I, John J. Quinn, a notary public within and for said county, do hereby certify that on this 14th day of June, A. D. 1883, personally came before me John McDougall, to me

well known as the person described in and who executed the foregoing deed, and he acknowledged that he executed the same freely and voluntarily.

JOHN J. QUINN,
Notary Public, Carlton Co., Minn.

(Notarial Seal, Carlton Co., Minn.)

STATE OF MINNESOTA,)
County of St. Louis.)

838 I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book X of Deeds, on page 215. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

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839 COMPLAINANT'S EXHIBIT "T."

Offered in evidence on page 185.

WARRANTY DEED.

C. N. Nelson Lumber Co. to S. J. Murphy.

Filed fo rrecord March 6, 1884, at 10 a. m.
Book Y, page 149.

This indenture, made this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and eighty-three, between the C. N. Nelson Lumber Company, a corporation created and existing under the laws of the State of Minnesota, party of the first part, and Simon J. Murphy,
840 of the City of Detroit and State of Michigan, party of the second part.

Witnesseth, that the said party of the first part, in consideration of the sum of nine thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of Saint Louis and State of Minnesota, described as follows, to-wit: The North West

quarter of the South West quarter (N W ¼ of S W ¼) and Lot Three (3) of Section Eleven (11) and Lots Three (3) and Four (4) of Section Ten (10), all in Township Fifty-seven (57) North of Range Seventeen (17) West of the 4th Principal Meridian. Also the South half of the North West quarter (S ½ of N E ¼), the South West quarter of the North East quarter (S W ¼ of N E ¼), the North West quarter of the South East quarter (N W ¼ of S E ¼) and South half of South West quarter (S ½ of S W ¼) of ection Thirteen (13), the West half of the South East quarter (W ½ of S E ¼) and South half of South West quarter (S ½ of S W ¼) of Section 841
Fourteen (14), and the East half of the North West quarter (E ½ of N W ¼) of Section Twenty-four (24) and the East half of the South West quarter (E ½ of S W ¼), the South West quarter of the South West quarter (S W ¼ of S W ¼) and Lot Two (2) of Section Thirty-four (34), all in Township Fifty-eight (58) North of Range Seventeen (17) West of the 4th Principal Meridian, containing 771 1-100 acres, more or less, according to the government survey thereof.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, his heirs and assigns, forever. 842

And the said C. N. Nelson Lumber Company, party of the first part, for itself, its successors, do covenant with said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In testimony whereof, the said C. N. Nelson Lumber Company has caused these presents to be subscribed by the president and secretary thereof, and the corporate seal 843

thereof to be hereunto duly affixed, the day and year first above written.

C. N. NELSON LUMBER CO.,
CHAS. N. NELSON, President.
P. M. RAMSEY, Secretary.

(Corporate Seal.)
Signed, sealed and delivered in the presence of
CHARLES G. LAWRENCE,
LOUIS E. WHITE,
Witnesses.

844

STATE OF MINNESOTA,)
County of St. Louis.)

On this 19th day of January, A. D. 1884, before me appeared Charles N. Nelson and Philip M. Ramsey, to me personally known, who, being by me duly sworn, did say that they were respectively the president and secretary of the C. N. Nelson Lumber Company, and that the seal affixed to this instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf
845 of said corporation by authority of its board of directors, and said Charles N. Nelson and Philip M. Ramsey acknowledged said instrument to be the free act and deed of said corporation.

CHARLES G. LAWRENCE,
Notary Public.

(Notarial Seal, Ramsey Co., Minn.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county
846 do hereby certify that the within is a true and correct copy of the records in my office, as found in Book Y of Deeds on page 149. That I have compared such copy with the original record, and that it is a carrect transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "U."

Offered in evidence on page 185.
Book T of Deeds, page 565.

WARRANTY DEED.

D. E. Little, et al., to S. J. Murphy.

Filed for record April 25th, 1883, at 2 o'clock p. m.

This indenture, made this eleventh day of April, in the year of our Lord one thousand eight hundred and eighty-three, between Daniel E. Little and Abigal E. Little, his 847
wife, Philip M. Graff and Sarah A. Graff, his wife, all of Duluth, Minnesota, and Edmund D. Graff, of Armstrong County, Pennsylvania, parties of the first part, and Simon J. Murphy, of Detroit, Michigan, party of the second part.

Witnesseth, that the said parties of the first part, in consideration of the sum of sixty-five thousand (65,000 dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all those tracts or parcels of land lying and being in the County of St. Louis and State of Minnesota, described as follows, to-wit: The 848
North half of the South West quarter (N 1-2 of S W 1-4) of Section Thirteen (13), the East half of the South East quarter (E 1-2 of S E 1-4) of Section Fourteen (14), the North East quarter of the North East quarter (N E 1-4 of N E 1-4) and the South half of the South East quarter (S 1-2 of S E 1-4) and the South West quarter of the North East quarter and the North West quarter of the South East quarter (S W 1-4 of N E 1-4 and N W 1-4 of S E 1-4), the North West quarter of the North East quarter (N W 1-4 of N E 1-4) and the South East quarter of the North East quarter and the North East quarter of the South East quarter (S E 1-4 of N E 1-4 and N E 1-4 of S E 1-4) of Section Twenty-two (22), the North 849
half of the South East quarter and South West quarter of the South East quarter (N 1-2 of S E 1-4 and S W 1-4 of S E 1-4) and the North West quarter of the North East quarter and North half of the North West quarter (N W 1-4 of N E 1-4 and N 1-2 of N W 1-4) and the East half of the North East quarter (E 1-2 of N E 1-4) and the South half of the North West quarter (S 1-2 of N W 1-4) and the North half of the South West quarter (N 1-2 of S W 1-4) and the South West quarter of the North East quarter (S W 1-4 of N E 1-4) and the South East quarter of the South West quarter

(S E 1-4 of S W 1-4) of Section Twenty-three (23), the West half of the North West quarter (W 1-2 of N W 1-4) of Section Twenty-four (24), the South East quarter of the South East quarter (S E 1-4 of S E 1-4) of Section Twenty-seven (27) and the East half of the North East quarter (E 1-2 of N E 1-4) of Section Thirty-one (31) and the West half of the North West quarter (W 1-2 of N W 1-4) of Section Thirty-two (32) and Lot One (1) of Section Thirty-four (34), the North West quarter (N W 1-4) and Lot Two (2) of Section Thirty-five (35), all in Township Number Fifty-eight (58) North of Range Seven-
850 teen (17) West of the Fourth Principal Meridian, and Lots Two, Three and Four (2, 3 and 4) of Section One (1) and Lots Two and One (2 and 1) of Section Three (3) and Lots One and Eight (1 and 8) of Section Four (4) and the North East quarter of the South West quarter and the South East quarter of the South West quarter (N E 1-4 of S W 1-4 and S E 1-4 of S W 1-4) of Section Six (6) and Lot Four (4) of Section Nine (9) and Lots One and Two and the North East quarter of the South West quarter and the South East quarter of the North West quarter (1 and 2 and N E 1-4 of S W 1-4 and S E 1-4 of N W1-4)ofSection Ten (10), all in Township Number Fifty-seven (57) North of Range Seventeen (17) West of
851 the Fourth Principal Meridian. And the North half of the South West quarter (N 1-2 of S W 1-4) of Section Twenty-seven (27) and the North West quarter of the South West quarter and the South East quarter of the South West quarter (N W 1-4 of S W 1-4 and S E 1-4 of S W 1-4) of Section Twenty-nine (29) and theEast half of the South East quarter (E 1-2 of S E 1-4) of Section Thirty (30) and the North half of the North West quarter (N 1-2 of N W 1-4) of Section Thirty-two (32), all in the Township Number Fifty-four (54) North of Range Fourteen (14) West of the Fourth Principal Meridian. And the North West quarter of Section Seventeen (17) and the East half of the North East quarter and Lots Three and Four (E 1-2 of N E 1-4 and Lots 3 and 4) of
852 Section Nineteen (19) and the West half of the North West quarter (W 1-2 of N W 1-4) of Section Twenty (20) and the North East quarter of the North East quarter and the South West quarter of the North East quarter (N E 1-4 of N E 1-4 and S W 1-4 of N E 1-4)of Section Twenty-nine (29), all in Township Number Fifty-three (53) North of Range Fourteen (14) West of the Fourth Principal Meridian. And the East half of the North West quarter (E 1-2 of N W 1-4) and the South West quarter of the North East quarter (S W 1-4 of N E 1-4) of Section Twenty-three (23) and the South East

quarter of the South West quarter (S E 1-4 of S W 1-4) of Section Fourteen (14) and the North West quarter of the North West quarter (N W 1-4 of N E 1-4) of Section Twenty-six (26) and the West half of the South East quarter (W 1-2 of S E 1-4) of Section Thirty-three (33), all in Township Number Fifty-three (53) North of Range Fifteen (15) West of the Fourth Principal Meridian. And the South East quarter of the South West quarter (S E 1-4 of S W 1-4) of Section Twenty-one (21) in Township Fifty-three (53) North of Range Fourteen (14) West of the Fourth Principal Meridian. To have and to hold the same, together with all the 853
hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said Daniel E. Little, Philip M. Graff and Edmund D. Graff, parties of the first part, for themselves and their heirs, executors and administrators, do hereby covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted premises, in the quiet and peaceable possession of the party of the second part, his 854
heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof, the said parties of the first part hereunto set their hands and seals the day and year first above written.

DANIEL E. LITTLE. (Seal.)
ABIGAIL E. LITTLE. (Seal.)
PHIIP M. GRAFF. (Seal.)
SARAH A. GRAFF. (Seal.)
EDMUND D. GRAFF. (Seal.)

Signed, sealed and delivered in the presence of 855
HENRY A SMITH,
DAVID C. BURREY,
Witnesses to the signatures of Daniel E. Little, Abigal E. Little, Philip M. Graff and Sarah A. Graff.
JAMES E. CLAYPOOLE,
W. J. WRIGHT,
Witnesses to E. D. Graff.

STATE OF MINNESOTA,)
County of St. Louis.)

I, Henry A. Smith, a notary public within and for said county, do hereby certify that on this eleventh day of April, A. D. 1883, personally came before me Daniel E. Little, Abigal E. Little, his wife, Philip M. Graff and Sarah A. Graff, his wife, to me known to be the signers and sealers of the foregoing instrument, and acknowledged that they executed the same freely and voluntarily.

HENRY A. SMITH,
856 Notary Public, St. Louis Co., Minn.

(Notarial Seal, St. Louis Co., Minn.)

COMMONWEALTH OF PENNSYLVANIA,)
County of Armstrong.)

I, W. J. Wright, a notary public within and for said county, do hereby certify that on this 17th day of April, 1883, personally came before me Edmund D. Graff, to me known to be an unmarried person and one of the signers and sealers of the foregoing instrument, and he acknowledged that he executed the same freely and voluntarily.

857 W. J. WRIGHT,
Notary Public.

(Notarial Seal, Armstrong Co., Penna.)

STATE OF PENNSYLVANIA,)
County of Armstrong.)

I, H. J. Haynes, clerk of the Orphans Court of said county, the same being a court of record, having a seal, do hereby certify that W. J. Wright, Esq., before whom the foregoing affidavit was made, was at the date thereof, to-wit, the 17th day of April, A. D. 1883, a notary public within and for said
858 county, and duly authorized to take the same. That I am well acquainted with his handwriting, and verily believe his signature thereto is genuine, and that the same is acknowledged in accordance with the laws of the State of Pennsylvania. In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the court house of said county, this 17th day of April, 1883.

H. J. HAYES,
Clerk.

(Orphan's Court Seal,
Armstrong Co., Penna.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book T of Deeds, on page 565. That I have compared the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy. 859

(Official Seal.)

COMPLAINANT'S EXHIBIT "V."

Offered in evidence on page 186.
Book "C" of Patents, page 350.

UNITED STATES TO MORRIS THOMAS.

No. .... Filed for record May 24, 1887, at 9 o'clock a. m.

The United States of America, to all to whom these presents shall come, greeting: 860

Certificate No. 5796.

Whereas Morris Thomas, of St. Louis County, Minnesota, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said Morris Thomas, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section Nine, the Northwest quarter of the Southwest quarter of Section Twenty-five; the Southwest quarter of the Southwest quarter of Section Thirty-four 861 and the lots numbered One, Two and Three of Section Two in Township Fifty-seven North of Range Seventeen West of the Fourth Principal Meridian, in Minnesota, containing two hudred and ten acres and eighty-five hundredths of an acre, according to the official plat of the survey of the lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Morris Thomas.

Now, know ye, that the United States of America, in con-

sideration of the premises, and in conformity of the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Morris Thomas, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Morris Thomas, and to his heirs and assigns, forever.

In testimony whereof, I, Chester A. Arthur, president
862 of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the thirtieth day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the independence of the United States the one hundred and eighth.

By the President:

CHESTER A. ARTHUR,

By O. L. JUDD, Asst. Sec'y.

(Seal.)

S. W. CLARK,

863 Recorder of the General Land Office.

Recorded, Vol. 9, page 344.

STATE OF MINNESOTA,)
County of St. Louis.)

I, R. S. Munger, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book C of Patents, on page 350. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

R. S. MUNGER,

Register of Deeds.

By S. L. PIERCE, Deputy.

864 (Official Seal.)

COMPLAINANT'S EXHIBIT "W."

Offered in evidence on page 186.

WARRANTY DEED.

Morris Thomas and Wife to Simon J. Murphy.

Filed for record March 14, 1884, at 10 o'clock, and recorded in Book "X" of Deeds, page 307.

This indenture, made this sixteenth day of February, A. D. 1884, between Morris Thomas and Angie C. Thomas, his wife, both of St. Louis County, Minnesota, parties of the first part, and Simon J. Murphy, of Detroit, Michigan, party of the second part.

Witnesseth, That the said parties of the first part, in consideration of the sum of five hundred (500) dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, forever, all the following described tract 865
or parcel of land, lying and being in the County of St. Louis and State of Minnesota, described as follows, to-wit:

The Southwest quarter of the Northwest quarter (S W 1-4 of N W 1-4) and the Northwest quarter of the Southwest quarter (N W 1-4 of S W 1-4) of Section Number Nine (9) and Lots One, Two and Three (1, 2 and 3) of Section Number Two (2), all in Township Fifty-seven (57) North of Range Seventeen (17) est of 4th P. M., containing one hundred and thirty and 85-100 acres, more or less, according to the government survey thereof.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto blonging or in any 866
wise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said Morris Thomas and Angie C. Thomas, his wife, parties of the first part, for their heirs, executors and administrators, do hereby covenant with the said party of the second part, his heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the party of thesecond part, his heirs and assigns, against all persons lawfully claiming, or to claim, the whole
or any part thereof, the said parties of the first part will 867
warrant and defend.

In testimony whereof, the said parties of the first part

have hereunto set their hands and seals the day and year first above written.

MORRIS THOMAS. (Seal.)
ANGIE C. THOMAS. (Seal.)

Signed, sealed and delivered in presence of
HENRY TISCH,
GEO. GRIMMER,
Witnesses.

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868 STATE OF WISCONSIN,)
County of Kewaunee.)

I, Henry Tisch, a notary public within and for said county, do hereby certify that on this sixteenth day of February A. D. 1884, personally came before me, Morris Thomas and Angie C. Thomas, his wife, to me well known as the persons described in and who executed the foregoing deed, and acknowledged that they executed the same frely and voluntarily.

HENRY TISCH,
Notary Public.

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869 STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of th records in my office, as found in Book X of Deeds, on page 307. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

870

COMPLAINANT'S EXHIBIT "X."

Offered in evidence on page 186.

The United States of America, to all to whom these presents shall come, greeting:

Certificate No. 3089.

Whereas, Robert Pratt, of St. Louis County, Minnesota, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that full payment

the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for the lots numbered One, Two and Three and the North East quarter of the South West quarter of Section Nine in Township Fifty-seven North of Range Seventeen West of the Fourth Principal Meridian, in Minnesota, containing one hudred ad forty-four acres and sixty-five hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said 871
Robert Pratt.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Robert Pratt, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Robert Pratt, and to his heirs and assigns, forever.

In testimony whereof, I, Grover Cleveland, president of the United States of America, have caused these letters 872
to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the third day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and thirteenth.

By the President:

GROVER CLEVELAND.

By M. McKEAN, Secretary.

(Official Seal.)

ROBT. W. ROSS,

Recorder of the General Land Office. 873

Recorded, Vol. 16, page 196.

OFFICE OF REGISTER OF DEEDS,)
State of Minnesota,)
County of St. Louis.)

I hereby certify that the within instrument was filed in

this office, for record, Dec. 2, 1897, at 1:30 p. m., and was duly recorded in Book G of Patents, on page 306.

A. LOFGREN,
Register of Deeds.
By S. L. PIERCE, Deputy.

COMPLAINANT'S EXHIBIT "Y."

Offered in evidence on page 186.

874 SPECIAL WARRANTY DEED.

Robert Pratt to Scott Griswold.

Book "S" of Deeds, page 355.
Filed for record Dec. 23rd, 1881, at 4 p. m.

This indenture, made this twenty-second day of December, in the year of our Lord one thousand eight hundred and eighty-one, between Robert Pratt, of St. Louis County, State of Minnesota, party of the first part, and Scott Griswold, of Kent County, State of Michigan, party of the second part.

Witnesseth, That the said party of the first part, in consideration of the sum of three hundred (300) dollars to him
875 in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents do convey to the said party of the second part, his heirs and assigns, forever, all those parcels situate in the County of St. Louis and State of Minnesota described as follows, to-wit:

Lots One (1), Two (2) and Three (3) and North East quarter (1-4) of South West quarter (1-4) of Section Nine (9), Township Fifty-seven (57) North of Range Seventeen (17) West of 4th Principal Meridian. Containing one hundred forty-four and 65-100 (144 65-100) acres of land, more or less according to the government survey thereof.

Together with the appurtenances thereunto belonging.
876 And the said party of the first part, for his heirs, executors and administrators, do covenant with the said party of the second part, his heirs, executors, administrators and assigns, that he has not done, or omitted to do, any act or thing whatsoever, whereby the above described premises, or any part thereof, now or at any time hereafter shall become imperilled, charged or encumbered in any manner whatsoever, and the title to the said premises against all persons lawfully claiming the same from or under the said party of the first part do hereby warrant and will forever defend.

In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

ROBERT PRATT. (Seal.)

Signed, sealed and delivered in presence of
F. W. EATON.
HUGH FRAZER.

STATE OF MINNESOTA,)
County of St. Louis.) 877

I, F. W. Eaton, a notary public in and for said county, do hereby certify that on this 22d day of December, A. D. 1881 personally appeared before me Robert Pratt, to me known to be the same person described in and who executed the within conveyance, and he acknowledged the same to be his free act and deed.

F. W. EATON,
Notary Public.

(Seal.)

STATE OF MINNESOTA,)
County of St. Louis.) 878

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book S of Deeds, on page 355. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

879

COMPLAINANT'S EXHIBIT "Z."

Offered in evidence on page 186.

WARRANTY DEED.

Scott Griswold and Wife to Simon J. Murphy.
Book Y, page 50.
Filed for record November 9, 1883, at 10 a. m.

This indenture, made this fifth day of October, in the year of our Lord one thousand and eight hundred and eighty-

three, between Scott Griswold and Martha Griswold, his wife, of Griswold, Kent County, Michigan, of the first part, and Simon J. Murphy, of Detroit, Michigan, of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sum of five thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part and his heirs
880 and assigns, forever, all those certain pieces or parcels of land situate and being in the County of St. Louis and State of Minnesota, and described as follows, to-wit: The South half of the North East quarter and the North East quarter of the South East quarter of Section Eight (8), the North East quarter of the South West quarter and Lots One (1), Two (2) and Three (3) of Section Nine (9) in Township Fifty-seven (57) North, Range Seventeen West. The East half of the South East quarter of Section Nine (9), Lits One (1), Two (2) and Three (3) of Section Ten (10), the South East quarter of the North West quarter and Lots Three (3), Four (4) and Five (5) of Section Five (5) in Township Fifty-seven
881 (57) North, Range Eighteen (18) West, the North half of the South West quarter and the South half of the North West quarter of Section Seventeen (17), Township Fifty-eight (58) North, Range Fourteen (14) West, containing, according to the government survey, six hundred eighty seven and 17-100 acres of land.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaiing. To have ad to hold the said premises as above described, with the appurtenances, unto the said party of the second part and to his heirs and assigns, forever. And the said Scott Griswold and parties of the first part, for themselves and for their heirs, executors and administrators, do
882 covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of th above granted premises in fee simple, that they are free from all incumbrances whatever, and that thy will and their heirs, executors and administrators shall warrant and defend the same against all lawful claims whatsoever.

In witness whereof, the said parties of the first part have

hereunto set their hands and seals the day and year first above written.

SCOTT GRISWOLD. (Seal.)
MARTHA GRISWOLD. (Seal.)

Signed, sealed and delivered in presence of
ANNA JOHNSON.
FAYETTE HOUGH.

STATE OF MICHIGAN,)
County of Kent.) 883

On this 5th day of October, in the year one thousand eight hundred and eighty-three, before me, a justice of the peace in and for said county, personally appeared Scott Griswold and Martha Griswold, his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

FAYETTE HOUGH,
A Justice of the Peace.

STATE OF MICHIGAN,) 884
County of Kent.)

I, Orlando H. Goodwin, clerk of said county (an ex officio clerk of the Circuit Court thereof, being a court of record having common law jurisdiction), do hereby certify that Fayette Hough, Esq., before whom the above and foregoing instrument appears to have been acknowledged, is and was at the time of the taking of such acknowledgement, and the certifying thereof, a justice of the peace within and for said county, duly commissioned, qualified and sworn and authorized by the law of said state to take such acknowledgement and to certify the same. And I further certify that I am acquainted with the handwriting of said Fayett Hough, 885 and believe his signature appended to the above certificate of acknowledgement to be genuine, and the said instrument is executed and acknowledged according to the laws of this state.

O. H. GOODWIN,
Clerk.
By CHAS. G. GODFREY, Deputy.

(Circuit Court Seal,
Kent Co., Mich.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county do hereby certify that the within is a true and correct copy of the records in my office, as found in Book Y of Deeds, on page 50. That I have compared such copy with the original record, and thatit is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
886 By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "A. A."

Offered in evidence on page 186.
Book G of Patents, page 138.

THE UNITED STATES OF AMERICA TO THOMAS W. FINN.

U. S. PATENT.

887 Filed for record the 3rd day of May, A. D. 1894, at 2:40 o'clock p. m.
No. 3440. Ex.

The United States of America, to all to whom these presents shall come, greeting:

Certificate No. 3257.

Whereas, Thomas W. Finn, of St. Louis County, Minnesota, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that full payment the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for
888 the Lots numbered Four, Five, Six and Seven, of Section Four in Township Fifty-seven North of Range Seventeen West of the Fourth Principal Meridian, in Minnesota, containing one hundred and thirty acres and ninety-four hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Thomas W. Finn.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the ser-

eral Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Thomas Finn, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Thomas W. Finn and to his heirs and assigns, forever.

In testimony whereof, I, Grover Cleveland, president of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. 889

Given under my hand, at the City of Washington, the third day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and thirteenth.

By the President:

GROVER CLEVELAND.

By M. McKEAN, Secretary.

(United States General Land Office.)

(Seal.)

ROBT. W. ROSS,

Recorder of the General Land Office.

Recorded, Vol. 16, page 226. 890

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book G of Patents, on page 138. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895. 891

P. J. BORGSTROM.

Register of Deeds.

By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "A. B."

Offered in evidence on page 186.

Book G of Patents, page 137.

UNITED STATES OF AMERICA TO CHARLES BEAULIEU.

U. S. PATENT.

Filed for record the 3rd day of May, A. D. 1894, at 2:40
892 o'clock p. m.
Number 3439. Ex.
Certificate No. 3254.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, Charles Beaulieu, of St. Louis County, Minnesota, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Duluth, Minnesota, whereby it appears that full payment the provisions of the Act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for
893 the Southeast quarter of the Southwest quarter and the Southwest quarter of the Southeast quarter of Section Thirty-three in Township Fifty-eight North of Range Seventeen West, and the Lots numbered Two and Three of Section Four in Township Fifty-seven North of Range Seventeen West of the Fourth Principal Meridian, in Minnesota, containing one hundred and seventy-one acres and seventeen hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Charles Beaulieu.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the
894 several acts of congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Charles Beaulieu, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Charles Beaulieu, and to his heirs and assigns, forever.

In testimony whereof, I, Grover Cleveland, president of the United States of America, have caused these letters

to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the third day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the independence of the United States the one hundred and thirteenth.

By the President:

GROVER CLEVELAND.

By M. McKEAN, Secretary.

(United States General Land Office.)

(Seal.) 895

ROBT. W. ROSS,

Recorder of the General Land Office.

Recorded, Vol. 16, page 225.

STATE OF MINNESOTA,)

County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book G of Patents, on page 137. That I have compared such copy with the original record, and that it is a correct transcript therefrom. 896

and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,

Register of Deeds.

By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "A. C."

Offered in evidence on page 187.

Book 67 of Deeds, page 396.

Filed Nov. 2nd, 1892, at 3 p. m.

Simon J. Murphy to Temple E. Dorr. 897

DEED.

This indenture, made this twenty-second day of September, in the year of our Lord one thousand eight hundred and ninety, between Simon J. Murphy and Ann M. Murphy, his wife, of Detroit, Wayne County, Michigan, parties of the first part, and Temple E. Dorr, of Saginaw, Saginaw County, Michigan, party of the second part.

Witnesseth, That the said parties of the first part, for

and in consideration of the sum of fifty-three thousand dollars ($53,000.00) to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, alien and confirm unto the party of the second part, and to his heirs and assigns, forever, an undivided one-sixth interest in all those certain pieces or parcels of land, situate, lying and being in the County of St. Louis, State of Minnesota, known and de-
898 scribed as follows, to-wit:

In Township Fifty-three (53) North, Range Fourteen (14) West, in Section Seventeen (17), the North West quarter; in Section Nineteen (19), East half of North East quarter and Lots numbered Three (3) and Four (4); in Section Twenty (20), West half of North West quarter; in Section Twenty-one (21), South East quarter of South West quarter; in Section Twenty-nine (29), North East quarter of North East quarter, South West quarter of North East quarter.

In Township Fifty-three (53) North, Range Fifteen (15) West, in Section Three (3), West half of South West quarter, South East quarter of South East quarter; in Section
899 Four (4), North West quarter of North West quarter, South East quarter of South est quarter, South West quarter of South East quarter, East half of South East quarter; in Section Five (5), North East quarter of North East quarter, West half of North East quarter, North West quarter, South West quarter, West half of South East quarter; in Section Six (6), North East quarter, North West quarter, North West quarter of South East quarter, East half of South East quarter; in Section Eight (8), East half of North East quarter, North West quarter of North East quarter, North West quarter of North West quarter; in Section Nine (9), North East quarter, North half of North West quarter; in Section Ten (10), North half of North West quarter, South
900 half of South West quarter, South West quarter of South East quarter; in Section Twlve, North East quarter of North East quarter; in Section Fourteen (14), South East quarter of North West quarter, East half of South West quarter; in Section Fifteen (15), South East quarter of North East quarter, West half of North East quarter, North half of North West quarter; in Section Twenty-two (22), South West quarter of South East quarter; in Section Twenty-three (23), South West quarter of North East quarter, East half of North West quarter; in Section Twenty-four (24),

Lot numbered Four (4); in Section Twenty-five (25), South half of South East quarter; in Section Twenty Six (26), North West quarter of North East quarter; in Section Twenty-seven (27), South half of North West quarter; in Section Thirty-three (33), West half of South East quarter; in Section Thirty-four (34), North West quarter of North East quarter.

In Township Fifty-four (54) North, Range Fourteen (14) West, in Section Twenty-seven (27), North half of South West quarter; in Section Twenty-nine (29), North West quarter of South West quarter, South East quarter of South West quarter; in Section Thirty (30), ast half of South East quarter; in Section Thirty-two (32), North half of North West quarter. 901

In Township Fifty-four (54) North, Range Fifteen (15) West, in Section Nineteen (19), North East quarter of South East quarter; in Secton Thirty (30), West half of South East quarter; in Section Thirty-one (31), North West quarter of North West quarter; in Section Thirty-three (33), South East quarter of North East quarter; in Section Thirty-five (35), North West quarter of South East quarter, East half of South East quarter.

In Township Fifty-six (56) North, Range Seventeen (17) West, in Section Twenty-eight (28), South East quarter of North East quarter, Lot numbered One (1); in Section Thirty-three (33), Lots numbered Three (3), Four (4) Five (5), Nine (9); in Section Thirty-four (34), Lot numbered Three (3), North Wst quarter of South West quarter. 902

In Township Fifty-seven (57) North, Range Seventeen (17) West, in Section One (1), Lots numbered Two (2), Three (3), Four (4); in Section Two (2), Lots numbered One (1), Two (2), Three (3); in Section Three (3), Lots numbered One (1), Two (2); in Section Four (4), Lots numbered One (1), Eight (8); in Section Six (6), East half of South West quarter; in Secton Eight (8), South half of North East quarter, North East quarter of South East quarter; in Secion Nine (9), Lots numbered One (1), Two (2), Three (3), Four (4), South West quarter of North West quarter, North West quarter of South West quarter, North East quarter of South West quarter; in Section Ten (10), Lots numbered One (1), Two (2), Three (3), Four (4), South East quarter of North West quarter, North half of South West quarter; in Section Eleven (11), Lot numbered Three (3), North West quarter of South West quarter. 903

In Township Fifty-seven (57) North, Range Eighteen (18)

West, in Section Five (5), Lots numbered Three (3), Four (4), Five (5), South East quarter of North West quarter; in Section Nine (9), East half of South East quarter; in Section Ten (10), Lots numbered One (1), Two (2), Three (3).

In Township Fifty-eight (58) North, Range Fourteen (14) West, in Section Seventeen (17), South half of North West quarter, North half of South West quarter.

In Township Fifty-eight (58) North, Range Sixteen (16) West, in Section Thirty (30), North West quarter of South West quarter.

904 In Township Fifty-eight (58) North, Range Seventeen (17) West, in Section Thirteen, South West quarter of North East quarter, South half of North West quarter, South West quarter, North West quarter of South East quarter; in Section Fourteen (14), South half of South West quarter, South East quarter; in Section Twenty-two (22), North East quarter, South East quarter; in Section Twenty-three (23), North East quarter, North West quarter, North West quarter of South West quarter, East half of South West quarter, West half of South East quarter, North East quarter of South East quarter; in Section Twenty-four (24), North East quarter, North West quarter, West half of South East
905 quarter, South East quarter of South East quarter; in Section Twenty-five (25), East half of North East quarter, North West quarter of North East quarter, South East quarter of North West quarter, East half of South West quarter, South West quarter of South East quarter, North East quarter of South East quarter; in Section Twenty-seven (27), South East quarter of South East quarter; in Section hirty-one (31), East half of North East quarter; in Section Thirty-two (32), West half of North West quarter, in Section Thirty-four (34), South West quarter of South West quarter, East half of South West quarter, Lots numbered One (1), Two (2); in Section Thirty-five (35), South East
906 quarter of North East quarter, North West quarter, North East quarter of South West quarter, Lot numbered Two (2).

In Township Fifty-five (55) North, Range Twenty-one (21) West, in Section Four (4), South half of North East quarter, North half of South East quarter.

In Township Fifty-six (56) North, Range Twenty (20) West, in Section Fourteen (14), South West quarter of North East quarter, South West quarter of North West quarter, East half of South West quarter, North West quarter of South East quarter; in Section Twenty-three (23), South West quarter of North East quarter, East half of

North West quarter, East half of South West quarter, West half of South East quarter; in Section Twenty-six (26), East half of North West quarter, South West quarter of North West quarter, North East quarter of South West quarter.

In Township Fifty-seven (57) North, Range Seventeen (17) West, in Section Five (5), South West quarter of North East quarter, South West quarter of North West quarter, North West quarter of South West quarter, East half of South West quarter, North West quarter of South East quarter; in Section Six (6), South half of North East quarter, Lots numbered Four (4), Five (5). 907

In ownship ifty-seven (557) North, Range Eighteen (18) West, in Section One (1), Lot numbered One (1), South East quarter of North East quarter.

In Township Fifty-eight (58) North, Range Seventeen (17) West, in Section Nineteen (19), South West quarter of South East quarter, East half of South East quarter; in Section wenty (20), West half of South West quarter, West half of South East quarter, South East quarter of South East quarter; in Section Twenty-two (22), South East quarter of North West quarter, South West quarter; in Section Twenty-seven (27), North West quarter of North East quarter, East half of North West quarter; in Section Twenty-nine (29), 908 North West quarter of North East quarter, West half of North West quarter, South East quarter of North West quarter; in Section Thirty (30), South East quarter of North East quarter, West half of South East quarter, North East quarter of South East quarter; in Section Thirty-one (31), West half of North East quarter, East half of North West quarter; South West quarter, West half of South East quarter, North East quarter of South East quarter; in Section Thirty-two (32), North West quarter of South West quarter; being all the lands bought in Minnesota by Simon J. Murphy, on joint account with Robinson and Flinn.

Together with all and singular the hereditaments and 909 appurtenances thereunto belonging or in anywise appertaining; and the reversion or reversions, rmainder or remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever, of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the said hereditaments and appurtenances: To have and to hold the premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said parties of the first part, for them-

selves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that they, Simon J. Murphy and Ann M. Murphy, the said parties of the first part, have not heretofore done, committed, or wittingly or willingly suffered to be done or committed, any act, matter or thing whatsoever whereby the premises hereby granted, or any part thereof, is, are or shall or may be charged or incumbered in title, estate or otherwise howsoever.

910 In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SIMON J. MURPHY. (L. S.)
ANN M. MURPHY. (L. S.)

Signed, sealed and delivered in presence of
WILLIAM H. MURPHY.
ANN M. MURPHY.

STATE OF MICHIGAN,)
County of Wayne.)

911 On this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and ninety, before me, a notary public in and for said county, personally came the before named Simon J. Murphy and Ann M. Murphy, his wife, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed. And the said Ann M. Murphy, being by me privately examined, separate and apart from her said husband, acknowledged that she executed said instrument freely and without fear or compulsion from any one. And I further certify that the foregoing deed is executed according to the laws of the State of Michigan.

WILLIAM H. MURPHY,
912 Notary Public,
Wayne County, Michigan.

(William H. Murphy, Notary Public,
Wayne County, Mich.)

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy

of the records in my office, as found in Book 67 of Deeds, on page 396. hat I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy.

(Official Seal.)

COMPLAINANT'S EXHIBIT "A. D." 913

Offered in evidence on page 187.
Book 39 of Deeds, page 56.
Filed Nov. 20th, A. D. 1889, at 11 a. m.
No. 12723.

Simon J. Murphy et ux to George O. Robinson.

DEED.

This indenture, made this second day of November, in the year of our Lord one thousand eight hundred and eighty-nine, between Simon J. Murphy and Ann M. Murphy, his wife, of Detroit, Wayne ounty, Michigan, parties of the first part, and George O. Robinson, of the same place, party of 914
the second part.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of thirty-seven thousand five hundred twenty dollars and thirty-one cents ($37,520.31) to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, alien and confirm unto the party of the second part, and to his heirs and assigns, forever, an undivided one-sixth interest in all those certain pieces or parcels of land, lying and being in the County of St. Louis, State of Minnesota, 915
known and described as follows, to-wit:

In Township Fifty-three (53) North, Range Fourteen (14) West, in Section Seventeen (17), N W 1-4; in Section Nineteen (19), E 1-2 of N E 1-4 and Lots numbered Three and Four (3 & 4); in Section Twenty (20), W 1-2 of N W 1-4; in Section Twenty-one (21), S E 1-4 of S W 1-4; in Section Twenty-nine (29), N E 1-4 of N E 1-4, S W 1-4 of N E 1-4.

In Township Fifty-three (53) North, Range Fifteen (15) West, in Section Three (3), W 1-2 of S W 1-4, S E 1-4 of S E

1-4; in Section Four (4), N W 1-4 of N W 1-4, S E 1-4 of S W 1-4, S W 1-4 of S E 1-4, E 1-2 of S E 1-4; in Section Five (5), N E 1-4 of N E 1-4, W 1-2 of N E 1-4, N W 1-4, S W 1-4, W 1-2 of S E 1-4; n Section Six (6), N E 1-4, N W 1-4, N W 1-4 of S E 1-4, E 1-2 of S E 1-4; in Section Eight (8), E 1-2 of N E 1-4, N W 1-4 of N E 1-4, N W 1-4 of N W 1-4; in Section Nine (9), N E 1-4, N 1-2 of N W 1-4; in Section Ten (10), N 1-2 of N W 1-4, S 1-2 of S W 1-4, S W 1-4 of S E 1-4; in Section Twelve (12), N E 1-4 of N E 1-4; in Section Fourteen (14), S E 1-4 of N W 1-4, E 1-2 of S W 1-4; in Section Fifteen (15),
916 S E 1-4 of N E 1-4, W 1-2 of N E 1-4, N 1-2 of N W 1-4; in Section Twenty-two (22), S W 1-4 of S E 1-4; in Section Twenty-three (23), S W 1-4 of N E 1-4, E 1-2 of N W 1-4; in Section Twenty-four (24), Lot numbered Four (4); in Section Twenty-five (25), S 1-2 of S E 1-4; in Section Twenty-six (26), N W 1-4 of N E 1-4; in Section Twenty-seven (27), S 1-2 of N W 1-4; in Section Thirty-three (33), W 1-2 of S E 1-4; in Section Thirty-four (34), N W 1-4 of N E 1-4.

In Township Fifty-four (54) North, Range Fourteen (14) West, in Section Twenty-seven (27), N 1-2 of S W 1-4; in Section Twenty-nine (29), N W 1-4 of S W 1-4, S E 1-4 of S W 1-4; in Section Thirty (30), E 1-2 of S E 1-4; in Section Thirty-two
917 (32), N 1-2 of N W 1-4.

In Township Fifty-four (54) North, Range Fifteen (15) West, in Section Nineteen (19), N E 1-4 of S E 1-4; in Section Thirty (30), W 1-2 of S E 1-4; in Section Thirty-one (31), N W 1-4 of N W 1-4; in Section Thirty-three (33), S E 1-4 of N E 1-4; in Section Thirty-five (35), N W 1-4 of S E 1-4, E 1-2 of S E 1-4.

In Township Fifty-six (56) North, Range Seventeen (17) West, in Section Twenty-eight (28), S E 1-4 of N E 1-4, Lot numbered One (1); in Section Thirty-three (33), Lots numbered Three (3), Four (4), Five (5), Nine (9); in Section Thirty-four (34), Lot numbered Three (3), N W 1-4 of S W 1-4.

918 In Township Fify-seven (57) North, Range Seventeen (17) West, in Section One (1), Lots numbered Two (2), Three (3), Four (4); in Section Two (2), Lots numbered One (1), Two (2), Three (3); in Section Three (3), Lots numbered One (1), Two (2); in Section Four (4), Lots numbered One (1), Eight (8); in Section Six (6), E 1-2 of S W 1-4; in Section Eight (8), S 1-2 of N E 1-4, N E 1-4 of S E 1-4; in Section Nine (9), Lots numbered One (1), Two (2), Three (3), Four (4), S W 1-4 of N W 1-4, N W 1-4 of S W 1-4, N E 1-4 of S W 1-4; in Section Ten (10), Lots numbered One (1), Two (2), Three (3), Four

(4), S E 1-4 of N W 1-4, N 1-2 of S W 1-4; in Section Eleven (11), Lot numbered Three (3), N W 1-4 of S W 1-4.

In Township Fifty-seven (57) North, Range Eighteen (18) West, in Section Five (5), Lots numbered Three (3), Four (4), Five (5), S E 1-4 of N W 1-4; in Section Nine (9), E 1-2 of S E 1-4; in Section Ten (10), Lots numbered One (1), Two (2), Three (3).

In Township Fifty-eight (58) North, Range Fourteen (14) Wst, in Section Seventeen (17), S 1-2 of N W 1-4, N 1-2 of S W 1-4.

In Township Fifty-eight (58) North, Range Sixteen (16) 919
West, in Section Thirty (30), N W 1-4 of S W 1-4.

In Township Fifty-eight (58) North, Range Seventeen (17) West, in Section Thirteen (13), S W 1-4 of N E 1-4, S 1-2 of N W 1-4, S W 1-4, N W 1-4 of S E 1-4; in Section Fourteen (14), S 1-2 of S W 1-4, S E 1-4; in Section Twenty-two (22), N E 1-4, S E 1-4; in Section Twenty-three (23), N E 1-4, N W 1-4, N W 1-4 of S W 1-4, E 1-2 of S W 1-4, W 1-2 of S E 1-4, N E 1-4 of S E 1-4; in Section Twenty-four (24), N E 1-4, N W 1-4, W 1-2 of S E 1-4, S E 1-4 of S E 1-4; in Section Twenty-five (25), E 1-2 of N E 1-4, N W 1-4 of N E 1-4, S E 1-4 of N W 1-4, E 1-2 of S W 1-4, S W 1-4 of S E 1-4, N E 1-4 of S E 1-4; in Section Twenty-seven (27), S E 1-4 of S E 1-4; 920
in Section Thirty-one (31), E 1-2 of N E 1-4; in Section Thirty-two (32), W 1-2 of N W 1-4; in Section Thirty-four (34), S W 1-4 of S W 1-4, E 1-2 of S W 1-4, Lots numbered One (1), Two (2); in Section Thirty-five (35), S E 1-4 of N E 1-4, N W 1-4, N E 1-4 of S W1-4, Lot numbered Two (2).

Also, forever, an undivided one-sixth interest of an undivided one-half interest in all those certain pieces or parcels of land, situate, lying and being in the County of St. Louis, State of Minnesota, known and described as follows, to-wit:

In Township Fifty-five (55) North, Range Twenty-one (21) West, in Section Four (4), S 1-2 of N E 1-4, N 1-2 of S E 1-4. 921

In Township Fifty-six (56) North, Range Twenty (20) West, in Section Fourteen (14), S W 1-4 of N E 1-4, S E 1-4 of N W 1-4, E 1-2 of S W 1-4, N W 1-4 of S E 1-4; in Section wenty-three (23), S W 1-4 of N E 1-4, E 1-2 of N W 1-4, E 1-2 of S W 1-4, W 1-2 of S E 1-4; in Section Twenty-six (26), E 1-2 of N W 1-4, S W 1-4 of N W 1-4, N E 1-4 of S W 1-4.

In Township Fifty-seven (57) North, Range Seventeen (17) West, in Section Five (5), S W 1-4 of N E 1-4, S W 1-4 of N W 1-4, N W 1-4 of S W 1-4, E 1-2 of S W 1-4, N W 1-4 of S E

1-4; in Section Six (6), S 1-2 of N E 1-4, Lots numbered Four (4), Five (5).

In Township Fifty-seven (57) North, Range Eighteen (18) est, in Section One (1), Lot numbered One (1), S E 1-4 of N E 1-4.

In Township Fifty-eight (58) North, Range Seventeen (17) West, in Section Nineteen (19), S W 1-4 of S E 1-4, E 1-2 of S E 1-4; in Section Twenty (20), W 1-2 of S W 1-4, W 1-2 of S E 1-4, S E 1-4 of S E 1-4; in Section Twenty-two (22), S E 1-4 of N W 1-4, S W 1-4; in Section Twenty-seven (27), N W
922 1-4 of N E 1-4, E 1-2 of N W 1-4; in Section Twenty-nine (29), N W 1-4 of N E 1-4, W 1-2 of N W 1-4, S E 1-4 of N W 1-4; in Section Thirty (30), S E 1-4 of N E 1-4, W 1-2 of S E 1-4, N E 1-4 of S E 1-4; in Section Thirty-one (31), W 1-2 of N E 1-4, E 1-2 of N W 1-4, S W 1-4, W 1-2 of S E 1-4, N E 1-4 of S E 1-4; in Section Thirty-two (32), N W 1-4 of S W 1-4, being all the lands bought in Minnesota by Simon J. Murphy on joint account with Robinson and Flinn, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; and the reversion or reversions, remainder or remainders, rents, issues and profits thereof; and all the estate, right, title, in-
923 terest, claim or demand whatsoever, of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the said hereditaments and appurtenances.

To have and to hold the premises as before described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

And the said parties of the first part, for themselves, their heirs, excutors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that they, Simon J. Murphy and Ann M. Murphy, the said parties of the first part,
924 have not heretofore done, committed, or wittingly or willingly suffered to be done or committed, any act, matter or thing, whatsoever, whereby the premises hereby granted, or any part thereof, is, are or shall or may be charged or incumbered in title, esate or otherwise, howsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SIMON J. MURPHY. (L. S.)
ANN M. MURPHY. (L. S.)

Signed, sealed and delivered in presence of
WILLIAM H. MURPHY.
H. F. McKINNON.

STATE OF MICHIGAN,)
County of Wayne.)

On this eleventh day of November, in the year of our Lord one thousand eight hundred and eighty-nine, before me, a notary public in and for said county, personally came the before named Simon J. Murphy and Ann M. Murphy, his wife, known to me to be the persons who executed the foregoing instrument, and acknowledged the same to be their free act and deed. And the said Ann M. Murphy, being by me privately examined, separate and apart from her said husband, acknowledged that she executed said instrument freely and without fear or compulsion from any one. 925

WILLIAM H. MURPHY,
Notary Public,
Wayne County, Michigan.

And I further certify that the foregoing deed is executed according to the laws of the State of Michigan.

WILLIAM H. MURPHY,
Notary Public,
Wayne County, Michigan.

(William H. Murphy, Notary Public,
Wayne County, Mich.) 926

STATE OF MINNESOTA,)
County of St. Louis.)

I, Peter J. Borgstrom, register of deeds of said county, do hereby certify that the within is a true and correct copy of the records in my office, as found in Book 39 of Deeds, on page 56. That I have compared such copy with the original record, and that it is a correct transcript therefrom.

Dated this 10th day of June, A. D. 1895.

P. J. BORGSTROM,
Register of Deeds.
By B. O. LOE, Deputy. 927

County of St. Louis.)

EXHBIT "A. E."

Offered in evidence on page 187.

QUIT CLAIM DEED.

This indenture, made the seventeenth day of June, in the year of our Lord one thousand eight hundred and ninety-

three, between The Security Land and Exploration Company, a corporation organized and existing under the laws of the State of Minnesota, of the first part, and Simon J. Murphy, of Detroit, Michigan, representing an undivided one-half (1-2) interest, and George O. Robinson and Elisha H. Flinn, of Detroit, Michigan, and Temple E. Dorr, of Saginaw, Michigan, representing each an undivided one-sixth (1-6) interest, of the second part.

Witnesseth, That the said party of the first part, for and in consideration of the sum of one dollar, and quit-claim
928 deed, from the parties of the second part, to the party of the first part therein, of same date herewith, to it in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release and forever quit-claim unto the said parties of the second part, and to their heirs and assigns, forever.

All those certain pieces or parcels of land, situated in the St. Louis County, and State of Minnesota, known and described as follows:

All that part of the South half of Northeast quarter (S 1-2 of N E 1-4) and the Southeast quarter (S E 1-4) of Section
929 Four (4), in Township Fifty-seven (57) North, Range Seventeen (17) West, lying Northerly and Easterly of a line drawn from the center of said Section to the Southeast corner thereof, also North half of Section Nine (9), in Township Fifty-seven (57) North, Range Seventeen (17) West.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold the said premises to the said parties of the second part, and to their heirs and assigns, to the sole and proper use, benefit and behoof of the said parties of the second part, heirs and assigns, forever.

In witness whereof, the said party of the first part has
930 hereunto set its hand and seal the day and year first above written.

SECURITY LAND AND EXPLORATION COMPANY.
By JAMES T. HALE, President.

Attest:
JESSE NORTON,
Secretary.

Signed, sealed and delivered in presence of
C. F. MORGAN.
ALSTON G. MESSER.

STATE OF MINNESOTA,)
County of St. Louis.)

On this twenty-eighth day of August, 1893, before me appeared James T. Hale, to me personally known, who, being by me duly sworn, did say that he is the president of Security Land and Exploration Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said James T. Hale acknowledged said instrument to be the free act and deed of said corporation. 931

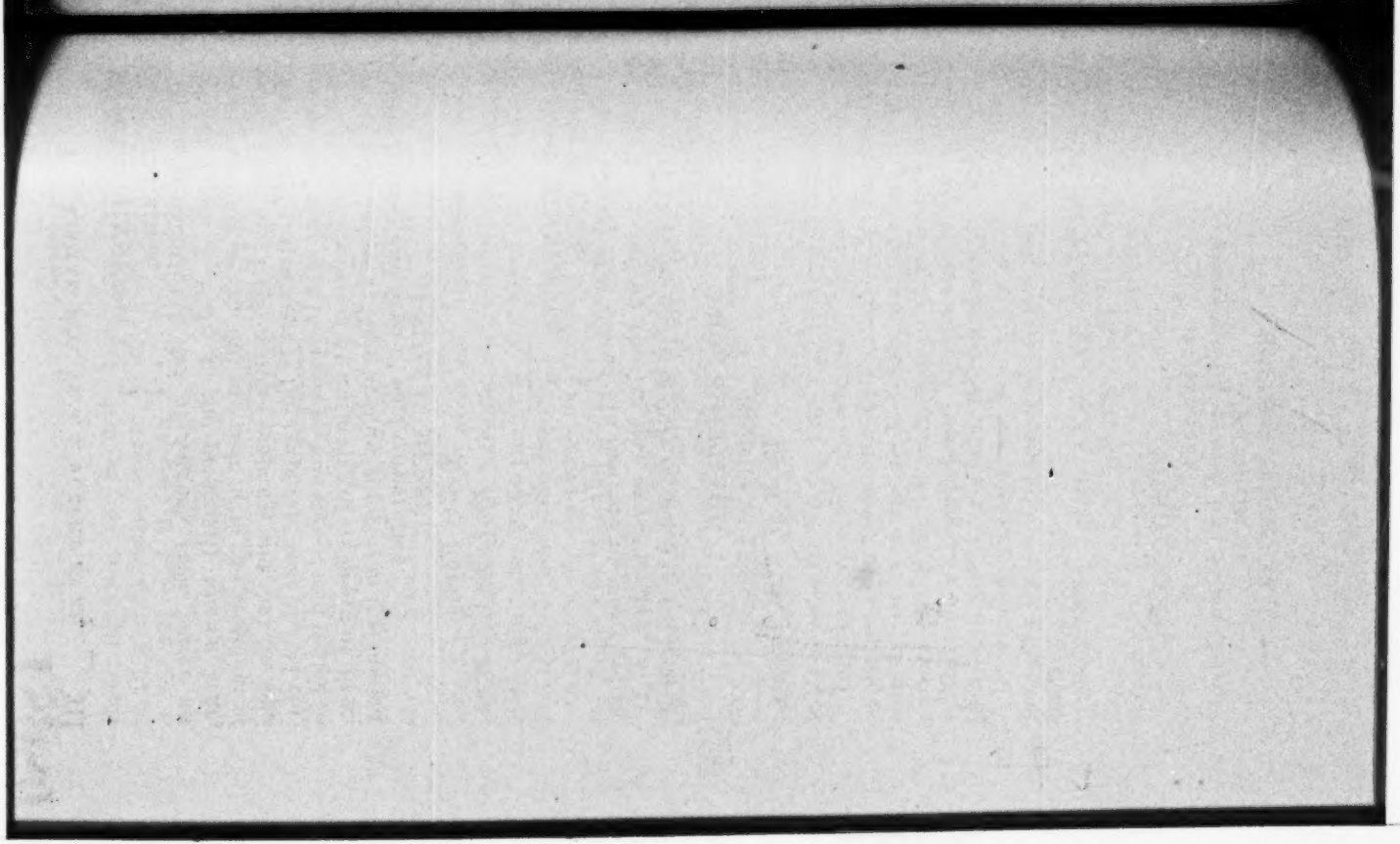
ALSTON G. MESSER,
Notary Public,
St. Louis Co., Minn.

(Official Seal.)

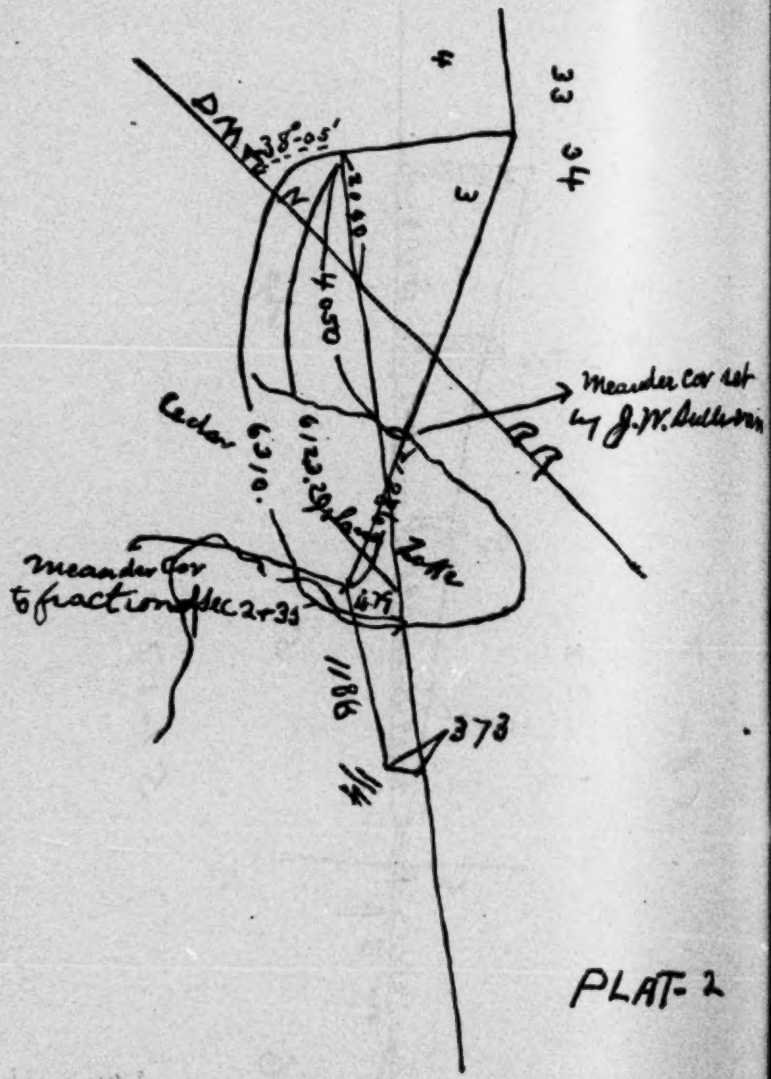
STATE OF MINNESOTA,)
County of St. Louis.)

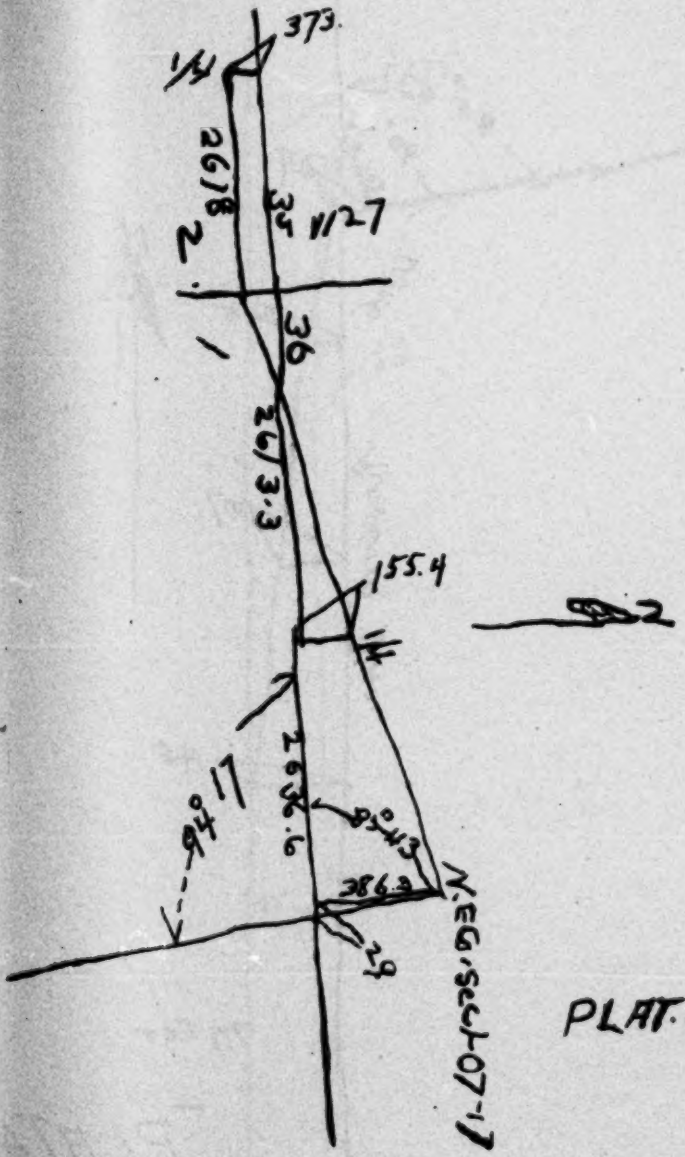
I hereby certify that the within instrument was filed in this office for record on the 7th day of September, A. D. 1893, at 4 o'clock p. m., and was duly recorded in Book 68 of Deeds, page 582.

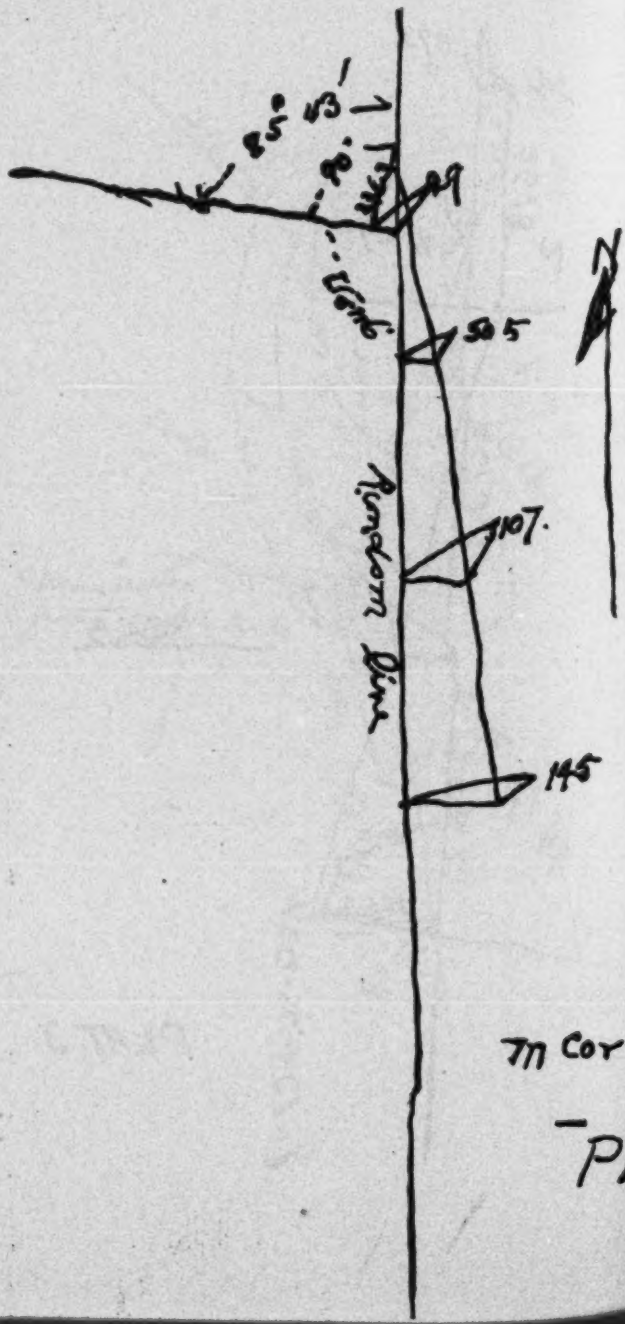
AMOS SHEPHARD, 932
Register of Deeds.
By B. O. LOE, Deputy.

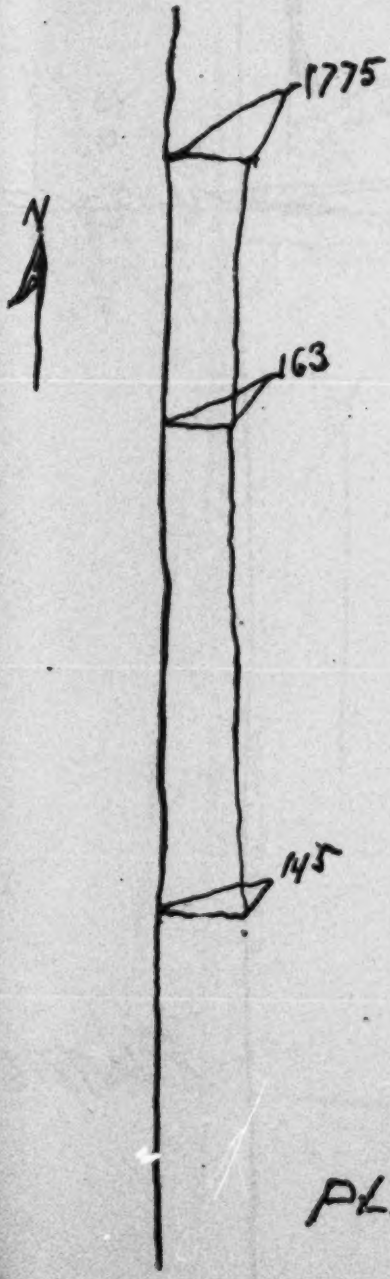


58-17
31
32
33
6
5
4
57-17
PLAT 4

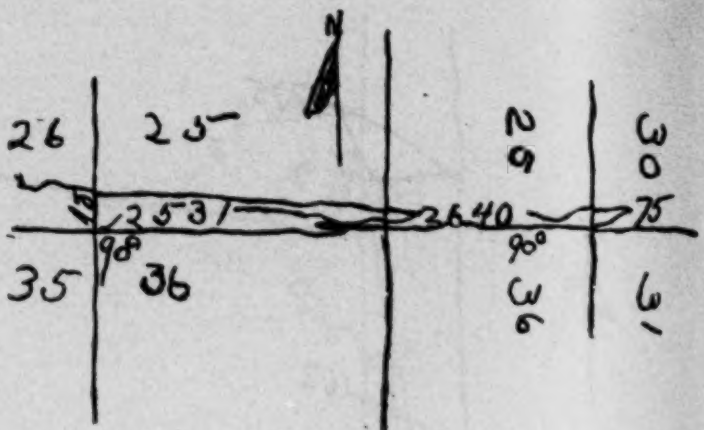

DMR
38°-05'
4
3
33
34
Meander cor set by J. W. Sullivan
Cedar
6310.
Meander cor to fraction Sec 2 & 35
9811
378
PLAT-2


373.
1/4
2618
24
1127
2
1
36
2673.3
155.4
1/4
2
2626.6
0°43'
386.3
29
N.E.G.S.C.T.O.T.
PLAT. 3

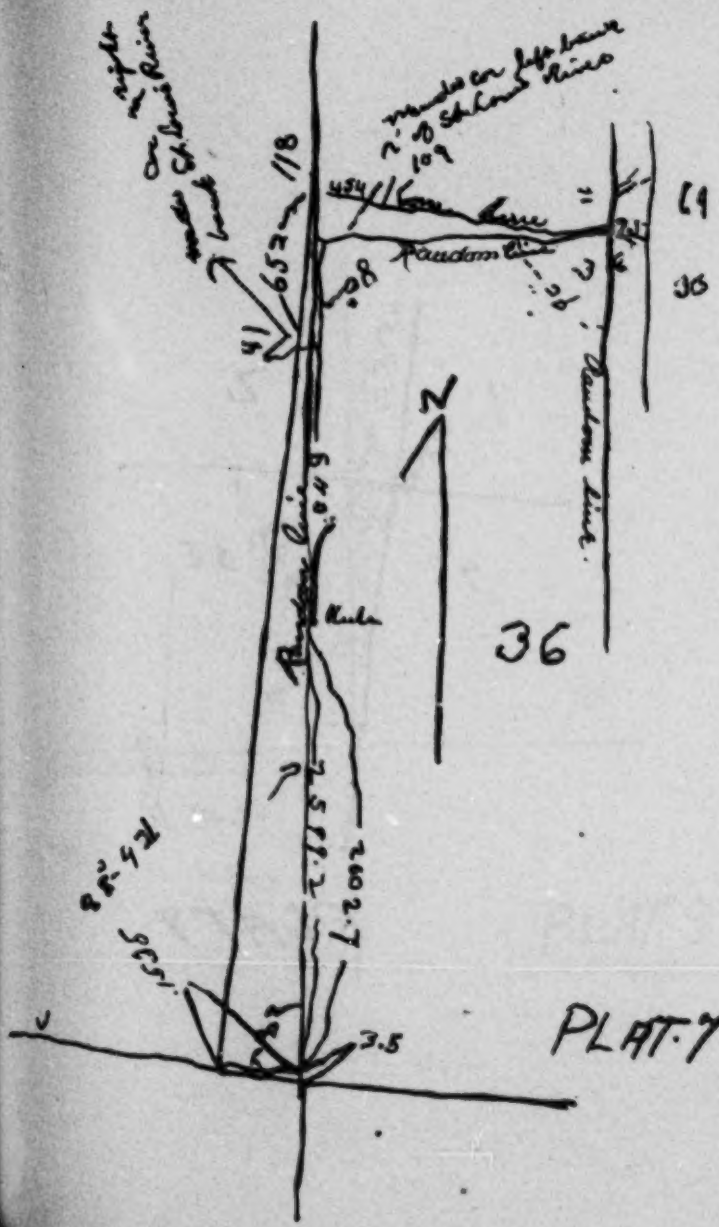

N
Random Line
107.
145
PLAT

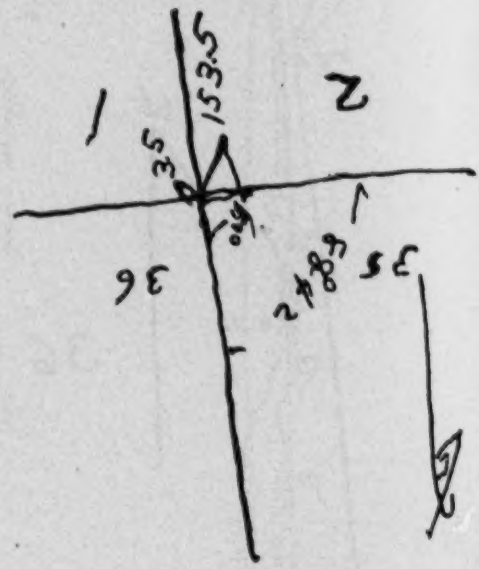


PLAT 5

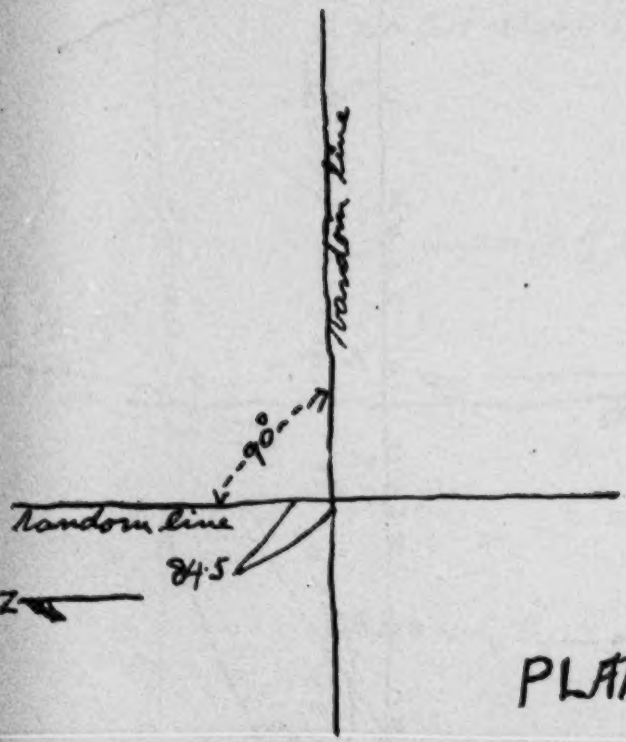


PLAT. 6

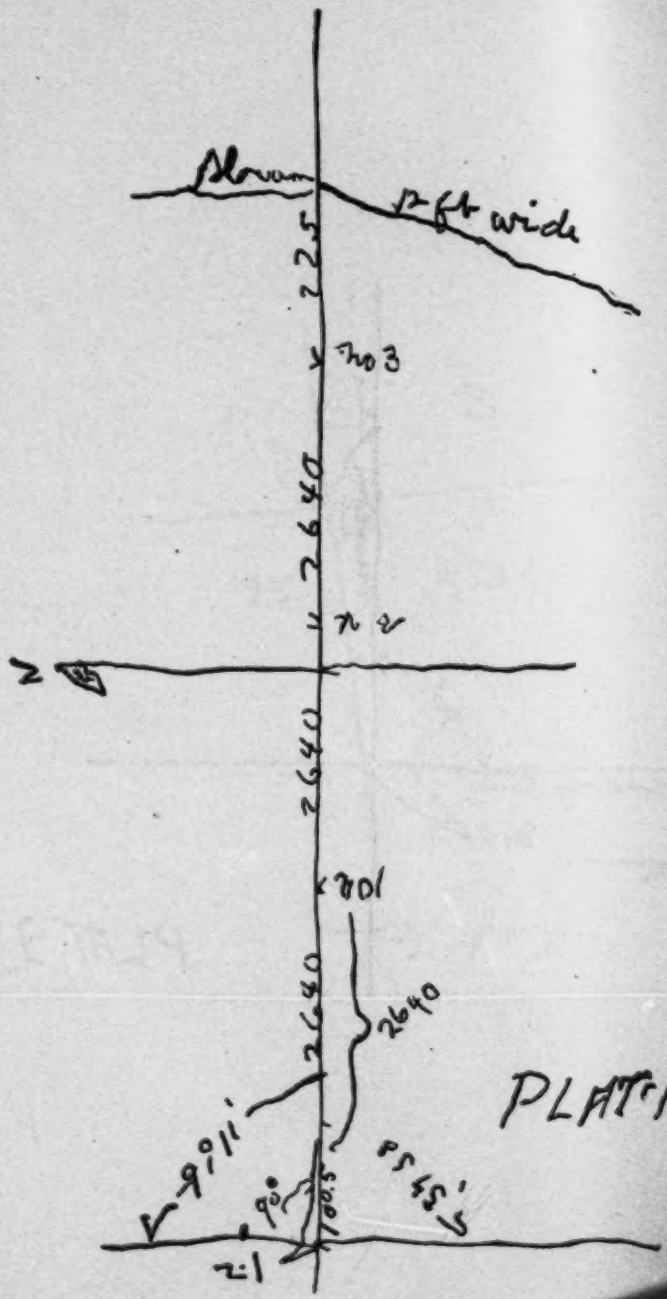

Random Line
36
PLAT. 7

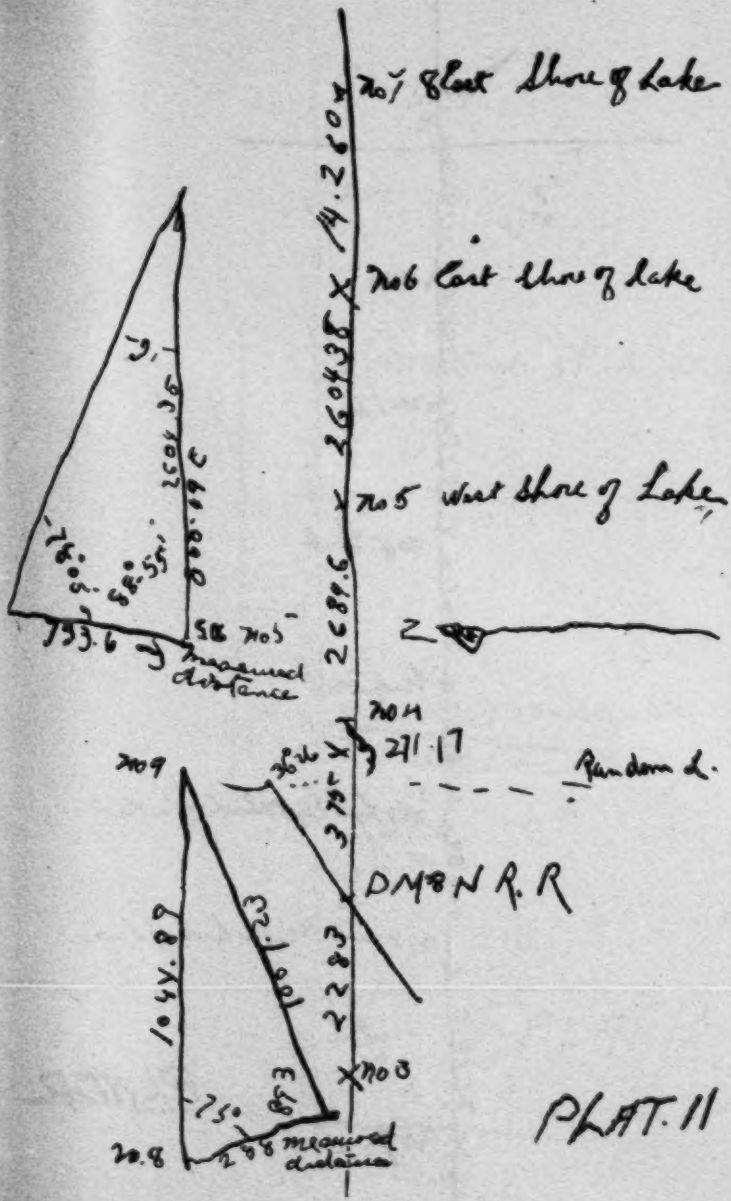


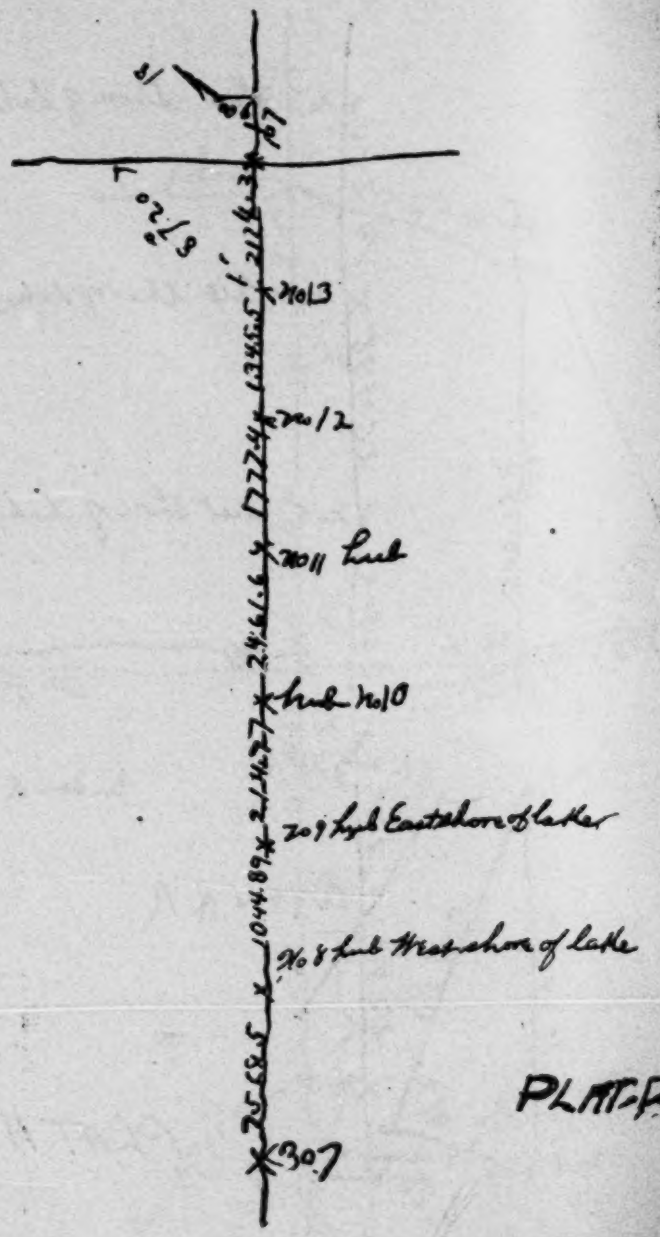
PLAT 9

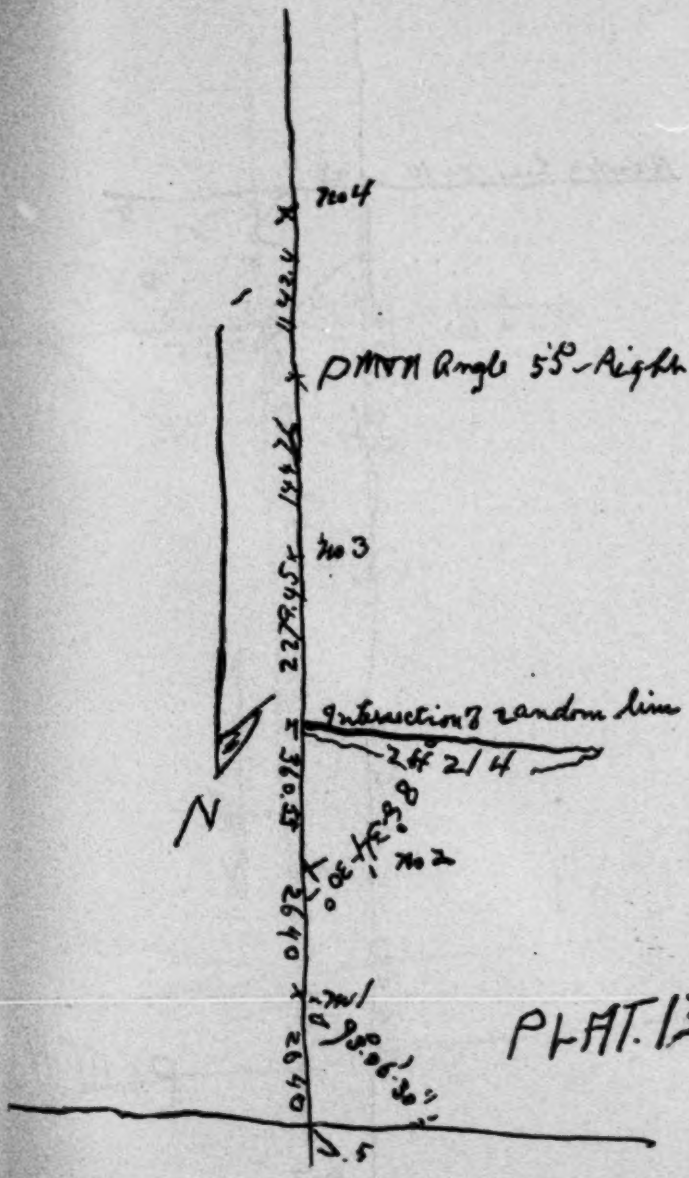


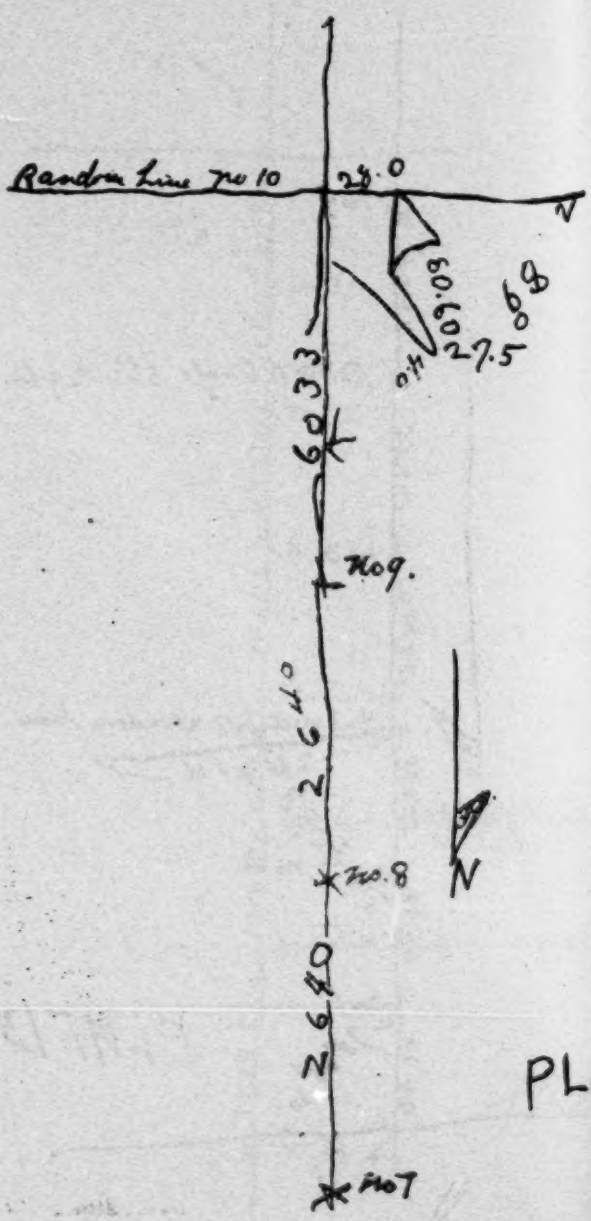
PLAT 9


Slough
12 ft wide
2225
No 3
2640
N 2
N
2640
No 1
2640
2640
PLAT 10
N 9° 11' E
9°
100.5'
S 45° 45' E
2:1


No 7 East Shore of Lake
No 6 East Shore of Lake
No 5 West Shore of Lake
No 4
No 9
No 8
Random d.
D M & N R. R
PLAT. 11
measured distance
measured distance


No 13
No 12
No 11 Land
Land No 10
No 9 Land East shore of Lake
No 8 Land West shore of Lake
PLAT-R
No 7


No 4
No 3
No 2
N
PLAT. 13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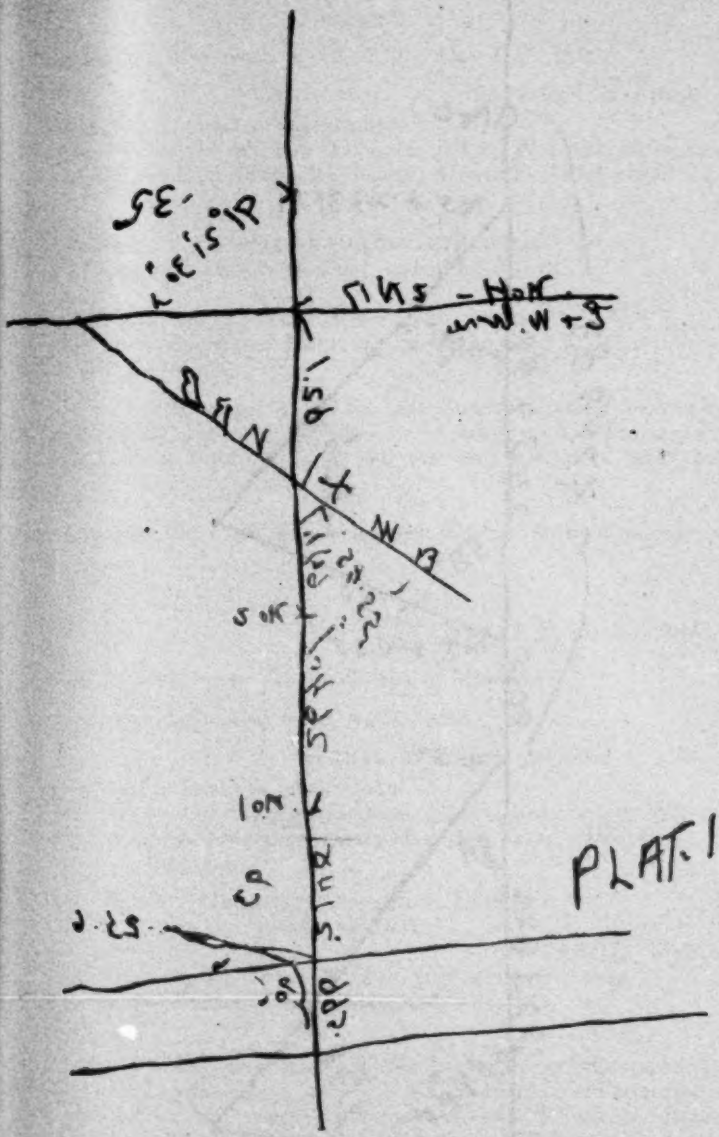
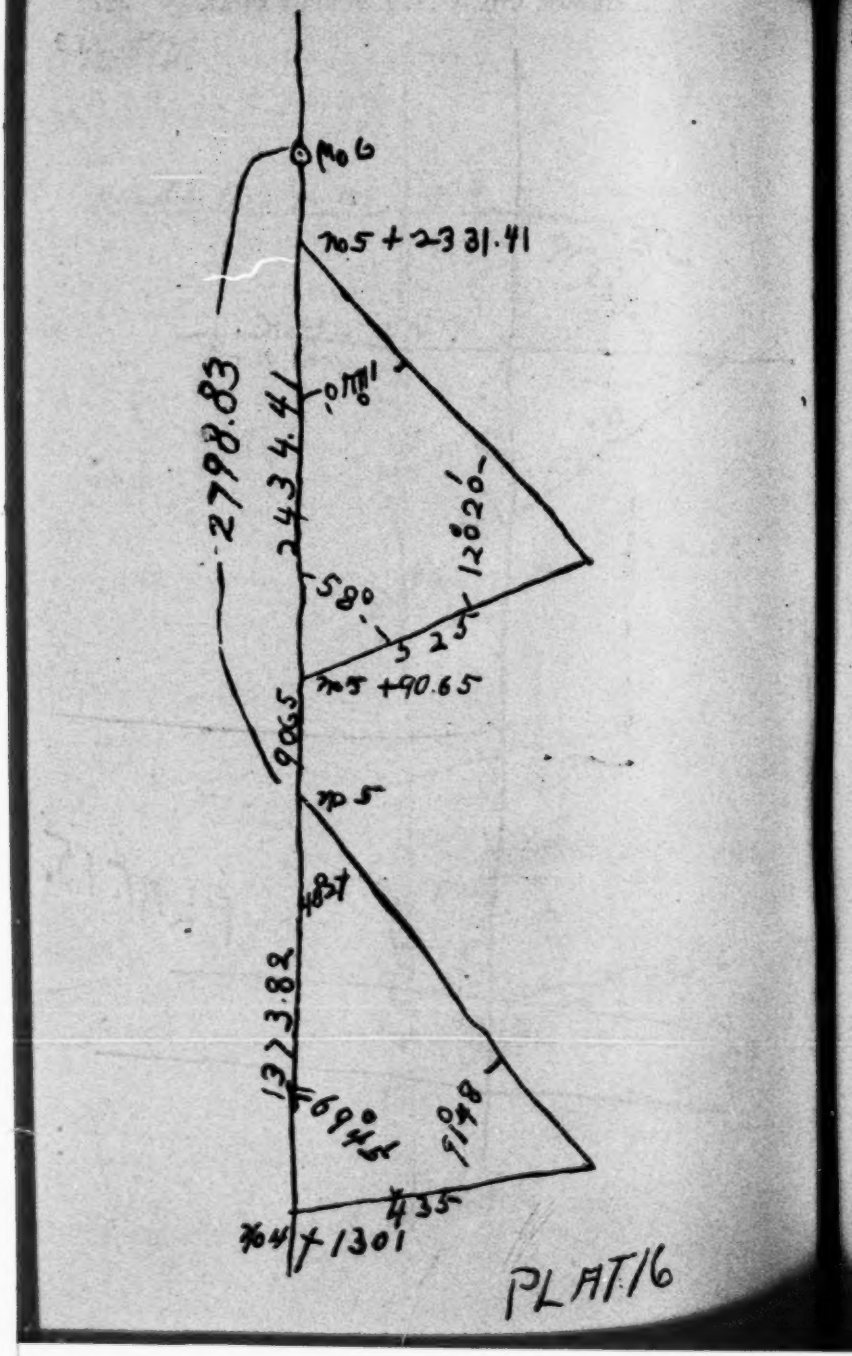
N
60.60
27.5
60.33
No 9.
26.40
No 8
N
26.40
No 7
PLAT 14



PLAT. 15.


706
705+2331.41
2798.83
2434.41
1°11'
580
12°20'
5 25
705+90.65
905
705
1323.82
1°48'
435
704+1301
PLAT 16

329 United States circuit court for the district of Minnesota, fifth division.

Term minutes, May term, A. D. 1899. May 18th, 1899.

THURSDAY MORNING.

Court opened pursuant to adjournment.

Present: Honorable William Lochren, judge; Wm. H. Grimshaw, U. S. marshal, by C. A. Nimocks, deputy; Henry D. Lang, clerk.

* * * * * * *

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. Flynn, and Temple O. Dorr, plaintiffs,
vs.
P. H. KERWIN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas Crosswell, defendants. } No. 254.

Ordered, That this cause be, and the same hereby is, passed for hearing and argument at this time, the same to be taken up for hearing and argument at some future time to suit the convenience of court and counsel.

* * * * * * *

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

United States circuit court for the district of Minnesota, fourth division.

Term minutes, September term, A. D. 1899.

FRIDAY MORNING, *December 1, 1899.*

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal; Henry D. Lang, clerk, by G. F. Hitchcock, jr., deputy.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. Flinn, and Temple O. Dorr
v.
P. K. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Crosswell. } Fifth division case.

The above-entitled cause came on for hearing upon the pleadings, final proofs, and arguments of counsel. Mr. M. H. Stanford appeared as solicitor for the complainants, and Messrs. Robert G. Evans,
330 W. F. Bailey, and John R. VanDerlip as solicitors and counsel for the defendants. And the argument of said cause not being concluded at the hour of adjournment it is by the court—

Ordered, That further proceedings therein be, and the same hereby are, continued until to-morrow morning at ten o'clock.

United States circuit court for the district of Minnesota, fourth division.

Term minutes, September term, A. D. 1899.

SATURDAY MORNING, *December 2, 1899.*

Court opened pursuant to adjournment.

Present: Honorable William Lochren, U. S. district judge; William H. Grimshaw, United States marshal; Henry D. Lang, clerk, by G. F. Hitchcock, jr., deputy.

SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha H. Flinn, and Temple O. Dorr
v.
P. K. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Crosswell.
} Fifth division case.

The above-entitled cause coming on to be further heard upon the pleadings, final proofs, and arguments of counsel, the same is further argued on behalf of the complainants by Mr. M. H. Stanford, and on behalf of the defendants by Messrs. Robert G. Evans, W. F. Bailey, and John R. Van Derlip, duly submitted and by the court taken under advisement.

UNITED STATES OF AMERICA,
District of Minnesota, fourth division, set.:

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings with the original thereof, which are in my custody as such clerk, and that such copies are correct copies of such originals and of the whole thereof in the cause therein named.

Witness my hand as clerk, and the seal of said court.

Done at my office, in Minneapolis, Minnesota, this sixth day of December, A. D. 1899.

[SEAL OF THE COURT.] HENRY D. LANG, *Clerk*,
By ROBERT C. MABEY, *Deputy.*

(Indorsed:) Filed Dec. 10, 1900, as of Dec. 7, 1899. Henry D. Lang, clerk. By Thos. H. Pressnell, deputy clerk.

331 United States circuit court, district of Minnesota, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. Flinn, and Temple O. Dorr
v.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Croswell.
} Decision.

This is a bill in equity wherein the complainants ask for a decree restraining and perpetually enjoining the defendants from making a survey of certain lands claimed by the complainants and described in the bill, surrounding Cedar Island Lake, in township 57 N., of range 17

W., of the fourth principal meridian, in the county of Saint Louis, Minnesota, such survey having been ordered by the Land Department of the United States. The defendant Kirwan is the United States surveyor-general for Minnesota, and the defendant Croswell is a deputy surveyor, with whom a contract has been made by order of the Commissioner of the General Land Office to make the survey. Upon [—] -rary injunction was issued as prayed for in the bill, and the order allowing the same was afterwards affirmed by the circuit court of appeals of this circuit.

Kirwin *v.* Murphy, 83 Fed., 275.

Upon final hearing the following facts appear:

1. On or about April 26, 1876, a contract for the survey of all lands in township 57 north, of range 17 west, in Saint Louis County, Minnesota, was made by the Government of the United States with one Henry S. Howe, as a deputy surveyor of the United States, and thereafter said Howe made and filed what purported to be field notes of a survey of said township, from which a purported official plat of said township was thereafter made and approved by the surveyor-general of the United States for the district of Minnesota and by the Commissioner of the General Land Office, of which plat Exhibit A attached to the bill of complaints is a substantially correct copy.

2. There is no evidence, nor any marks upon the ground, to indicate that any actual survey of said township 57 was ever made by said Howe, as required by his said contract, and by the rules and regulations of the General Land Office, or at all, beyond the running and due marking of the exterior boundary lines of said township, where the section, quarter, and other posts and markings established by him are and always have been clear, distinct, and readily found and traced. There is no evidence on the ground that section lines were ever run by him in or across
332 said township, or section corner posts or quarter posts ever located or set by him, except a corner post at the northwest corner of section thirty-six (36) and a quarter post in the western line of said section thirty-six (36), and there is no evidence that witness trees were ever blazed or marked by him.

3. Cedar Island Lake is a navigable, deep, and permanent body of water, fed principally by springs, having an area of about nine hundred (900) acres, instead of about eighteen hundred (1,800) acres as described in the field notes of Howe and shown on said official plat of said township. Instead of the shores of said lake being low and swampy, as stated in said field notes, the banks are generally high and sloping lands, suitable for agriculture, extending around the lake, and support a good growth of pine and other forest trees large enough for lumbering, such as will not grow in water. The condition was the same in 1876, and no material part of the land surrounding the lake is accretion. Southerly and westerly of said Cedar Island Lake are five other deep, navigable, and permanent lakes in the same township, none of which are shown by the field notes of Howe's survey or upon said Government official plat of said township, and all of which have, since the making of said official plat, been sold and patented by the Government as land according to said plat.

4. There is no evidence upon the ground that any meander line of said Cedar Island Lake was ever surveyed by said Howe, or any meander

posts placed by him about said lake, except one where the north line of said township encounters said lake. And the outlet of said lake is at a different place from that described in said field notes and shown upon said official plat. After the making of the said survey and plat and before its approval, complaints touching the accuracy thereof were made to the Commissioner of the General Land Office, but on the withdrawal of such complaints the said survey and plat were approved.

5. The land lying between the actual water line of said Cedar Island Lake and the meander line of that lake, as delineated on said official plat of said township, comprises the land in controversy in this suit, and is the same land directed to be surveyed by the Commissioner of the General Land Office and referred to in the surveyor's contract, which is attached as Exhibit A to the answer in this suit, being therein described as "the public lands situate in secs. 2, 3, 4, 9, 10, and 11, in township No. 57 N., R. 17 W., of the 4th principal meridian, lying between the 'old meander boundary of Cedar Island Lake,' as given by
the original field notes of Henry S. Howe, U. S. deputy sur-
333 veyor, approved by the surveyor-general of Minnesota Aug. 19, 1876, and the shore line of said Cedar Island Lake."

6. Prior to the commencement of this suit the United States has sold, and by its patents has conveyed to the purchasers, according to said official plat made from said Howe survey, all the land in said township 57, as the same appeared upon said plat; to which plat all of said patents expressly referred; it being then and still the only Government plat of said township.

7. The complainants are the grantees and owners by mesne conveyances from the patentees of the record title to the following-described fractional lots in said township, to wit: Lots one (1), two (2), three (3), in section two (2); lots one (1) and two (2), in section three (3); lots one (1) and eight (8), and portions of lots three (3), five (5), and six (6), in section four (4); lots one (1), two (2), three (3), and four (4), in section nine (9); lots one (1), two (2), three (3), and four (4), in section ten (10); and lot three (3), in section eleven (11), being the same lands which are more particularly described in complainants' bill; and each of which fractional lots appear and are represented on said official plat as bounded by and upon said Cedar Island Lake.

8. So far as appears none of the patentees of said lands had any notice or knowledge of any fraud or misconduct on the part of said Howe in or about the making of said survey and field notes, and all were purchasers in good faith of said lands.

9. Complainants purchased said fractional lots of land of the patentees of their grantees for the pine timber thereon, and the convenience of landing the same in the said Cedar Island Lake, to be driven to the place of manufacture; and before such purchase, in the year 1883, caused said lands to be explored and examined by an experienced timber estimator, who in making such examination used, is customary in such cases, a copy of said official plat of said township which did not have upon it any statement of the acreage or amount of land in any of the subdivisions; and who reported to the complainants his estimate of the amount of pine timber on said lands, and the general character of said land, and the riparian character thereof as bounded upon said Cedar Island Lake; but

did not discover or report any fraud or error in the survey of said township, or any error or mistake in the said official plat. And the said complainants purchased, paid for and took conveyances of said lands in good faith, and without any notice or knowledge of any such fraud, error, or mistake.

10. The other permanent lakes in said township, not shown upon such official plat, but appearing thereon as land, and since sold and
334 patented by the Government as land according to such official plat, include areas equal to the area of said Cedar Island Lake; and portions of such lakes were purchased by complainants as land with their other purchases in said township.

11. The survey sought to be restrained in this suit was ordered by the Commissioner of the General Land Office, upon the direction of the Secretary of the Interior, in a proceeding instituted by certain settlers upon the land in controversy; of which proceedings the complainants had due notice, and in which they appeared.

The case as presented at the final hearing does not differ in any material respect from the showing upon the motion for the preliminary injunction. If that injunction was properly allowed, a decree for permanent injunction should follow. The order granting that injunction was affirmed by the circuit court of appeals, and Judge Riner's very full and clear presentation of the facts and of the law leaves little that can be added. Kirwan v. Murphy, 83 Fed., 275.

In the surveying, platting, offering for sale, and sale of lands the Government deals as proprietor. The transactions are matters of business; and as between the Government and its patentees, or the purchasers from such patentees, all the rules applicable to private ownership and private sales attach, as in the case of an individual vendor. The Government through its agents and employes makes the surveys, and prepares the plats, according to which it offers for sale and sells its lands. If its agents and employes are negligent or unfaithful, and loss to the Government results, it can not shift that loss upon an innocent purchaser who has bought and received title upon the representations of the plats prepared by the Government and according to which the land is offered for sale, and the sales made, and the title to the lands conveyed by patent.

The question whether the Government, because of the negligence or fraud of its surveyor, has any claim to any part of the land which it has sold and conveyed by patent to the purchaser, is a question which the Land Department of the Government can not assume to determine. The patent passes the title from the Government and takes the land from the jurisdiction of that Department.

"With the title passes away all authority or control of the Executive Department over the land, and over the title which it has conveyed. It would be as reasonable to hold that any private owner of land who has conveyed it to another can, of his own volition, recall, cancel, or
335 annul the instrument which he has made and delivered. If fraud, mistake, error or wrong has been done, the courts of justice present the only remedy. These courts are as open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals; and if the Government is the party injured, this is the proper course."

Moore v. Robbins, 96 U. S., 530, 533.

It is admitted that all the land in said township has been sold according to said plat, and conveyed to the purchasers by patents referring to said plat. According to the said patents, and said plat to which they all refer, the Government has conveyed away the title to every acre of land in respect to which the Land Department has assumed to order this survey, the effect of which will be to disturb and cast a cloud upon the titles of the purchasers under these patents. It is admitted that as much in area in deep lakes in said town has, in accordance with said plat, been so sold and patented as land as there is of dry land represented; this deep lake area was purchased as land by complainants.

The Government, as against purchasers in good faith like the complainants, is bound by its own plat in accordance with which it has sold and conveyed all the land in that township. The purchasers must settle their titles and boundaries between themselves; and the Land Department has no longer the right to meddle with the land or cast doubt upon the titles so conveyed.

The case is unlike the cases of Granger v. Swart, 1 Woolworth, 88, and Niles v. Cedar Point Club, 175 U. S., 300. In those cases the plats and field notes showed that the boundary meander lines were not on the banks or margin of navigable water, but of other low lands; so there was no basis for the claim that the meander line merely indicated a natural boundary, or that any riparian rights existed as parcel of the land patented. In the case at bar the meander line is shown on the official plat referred to in the patents as marking the actual margin or bank of Cedar Island Lake, a navigable body of water, and therefore as including in the lots so bounded riparian rights upon that lake.

Neither is this case like that of Horne v. Smith, 159 U. S., 40, where the surveyor obviously surveyed the lot in question to a bayou, which he mistook for and marked as the Indian River. There the bayou was plain and open to be seen, and fitted as the meandered boundary, with all the other calls of the survey. The natural watercourse which was meandered was there and corresponded with the survey and plat; the surveyor was merely mistaken in the name by which he designated the watercourse. Here there was no such mistake; there is no body of water which the meander line will fit except Cedar Island Lake, which is the lake named on the plat.

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While these fractional lots bordering on Cedar Island Lake, which complainants purchased of the patentees, are much larger in acreage than is represented on the plat, this alone furnishes no grounds to warrant the Land Department in disregarding the patent and assuming to take possession of the excess through a resurvey and selling the same again. In Mitchell v. Smale, 140 U. S., 406, a small fractional lot [or] four and one-half acres, meandered on a lake, was held to include an unsurveyed point running beyond the meander line and into the lake, containing twenty-five acres. And a subsequent survey by the Land Department and patent to another purchaser of twenty-five acres was held invalid.

The court said (page 412):

"We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon or represented so to be. It is nothing more nor less than taking from the first

grantee a most valuable, and often the most valuable, part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title is a cause of vexatious litigation which ought not to be created or sanctioned. * * * The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to and have the effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed, and all the legal consequences of such a boundary in the matter of riparian rights and title to land under water regularly follow."

See also Hardin v. Jordan, 140 U. S., 371.

In the present case the official plat shows the bank of Cedar Island Lake, a large permanent body of still water, as one of the boundaries of each of the fractional lots here in dispute. This is a natural unchangeable monument and boundary to which courses, distances, and quantities
337 must all give way. The purchasers of these fractional lots from the Government, and later their vendees, the complainants, going upon the ground with a copy of the official map before purchasing, would not find section corners, nor any interior lines in the township; for the evidence shows that nothing of the kind was marked or designated on the ground. The only monument or boundary visible was the bank of Cedar Island Lake, and with that boundary fixed and plain they would form their judgments as to the location, character, and value of the land, and as to the value of the timber thereon, which they were purchasing, as well as of the riparian rights belonging to and parcel of the land. The proposal of the land department now is to take summary possession of this very portion of these lands which the patentees and their vendees the complainants were able to locate with certainty, from the only fixed and visible boundary, and with reference to the value and desirability of which, including the riparian rights, the purchases were made, and allow the same to be now entered by prowling squatters. If the United States has still any valid claim to any portion of these lands the title to which they have conveyed away by patent, they should first establish such claim in a court of justice; and if they can recover any part of any of those lots it is quite certain that it will not be the part which the land department now proposes to take—the very part, including riparian rights, which the patentees and complainants were shown by the plat to be the lands which they were purchasing and which they examined with the view of purchasing, and in fact did purchase and pay for. The evidence shows, as is above stated, that the riparian rights upon this lake were considered by complainants as an important element of value in making their purchases. As stated by Mr. Justice Mitchell in Lamprey v. State, 52 Minn. 181, 197:

"The incalculable mischiefs that would follow if the riparian owner is

liable to be cut off from access to the water, and another owner sandwiched in between him and it, whenever the water line had been changed by accretions and relictions, are self-evident and have frequently been animadverted on by the courts. These considerations apply to riparian ownership on lakes as well as streams. * * * The owners of lands bordering on them have often bought with reference to access to the water, which usually constitutes an important element in the value and desirability of the land. If the rule contended for by the appellants is to prevail, it would simply open the door for prowling speculators to step in and acquire title from the State to any relictions produced in the
338 course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to the water. The endless litigation over the location of the original water lines, and the grievous practical injustice to the owners of the original riparian estate that would follow would of themselves be a sufficient reason for refusing to adopt any such doctrine."

The Government having sold these fractional lots and conveyed the title thereto to the purchasers by patents which by reference to the plat covered the lands to the banks of Cedar Island Lake, the land department has no jurisdiction or authority to meddle with these lands by making the survey which that department has ordered, and which the defendants were about to make when this suit was begun. If the Government has any right or equity to have such patents corrected because of error or mistake, it must apply to a court having jurisdiction for that relief. And in such case, from the showing made in this suit, the title of the complainants to such portions of such lots as border on said lake as a permanent visible boundary will be the least assailable.

Decree will be entered as prayed for in the bill; and the form thereof, unless agreed to by counsel, may be settled upon two days' notice.

July 5, 1900.

WM. LOCHREN, *Judge.*

(Indorsed:) Filed July 6", 1900. Henry D. Lang, Clerk. By Margaret McKay, Deputy.

United States circuit court, eighth judicial circuit, district of Minnesota, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. Flinn, and Temple E. Dorr, complainants,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Croswell, defendants.
} In equity.

Notice of motion to settle decree.

To ROBERT G. EVANS, *United States District Attorney*, JOHN R. VAN-DERLIP and W. F. BAILEY, *Solicitors for Defts.*

GENTLEMEN:—You will please take notice that on the 23rd day of July next, at ten o'clock in the forenoon, I shall apply to the Honorable

William Lochren, United States district judge, at the Federal court room, in the city of St. Paul, Minnesota, to have settled the form of decree in the above-entitled action.

Yours truly,

M. H. STANFORD,
Solicitor for Complainants, Duluth, Minn.

Dated July 13, 1900.

339 United States circuit court, district of Minnesota, eighth judicial circuit, fifth division.

SIMON J. MURPHY ET AL., COMPLAINANTS,
vs.
P. H. KIRWAN, ETC., ET AL., DEFENDANTS. } In equity.

Affidavit.

STATE OF MINNESOTA,
County of St. Louis, ss:

Alfred L. Thwing, being duly sworn, says that he is a resident of the city of Duluth, Minnesota, and is over twenty-one years of age; that he is a clerk in the office of M. H. Stanford, the solicitor for the complainants in the above-entitled action, who resides at said city of Duluth; that on the thirteenth day of July, 1900, at said city of Duluth, he served a notice of which the annexed is a copy on each of the following-named persons, to wit: On Robert G. Evans, United States district attorney, on John R. Vanderlip, and on W. F. Bailey, all being solicitors and of counsel for the defendants in said above-entitled action, and named in said notice; that he served said notice on each of them by depositing in the post-office at said city of Duluth three of said notices, each of which was enclosed in a suitable sealed envelope, with postage prepaid thereon; one of such envelopes being addressed to Robert G. Evans, esq., U. S. dist. atty., custom-house bldg., St. Paul, Minn., one to John R. Vanderlip, esq., 335 Lumber Exchange, Minneapolis, Minn., and one to W. F. Bailey, esq., atty. at law, Eau Claire, Wis.; that affiant made such services at the request of said solicitor for the complainants.

ALFRED L. THWING.

Subscribed and sworn to before me this 21st day of July, 1900.

[NOTARIAL SEAL.]

M. H. STANFORD,
Notary Public, St. Louis Co., Minn.

(Indorsed:) Filed July 23d, 1900. Henry D. Lang, clerk.

United States circuit court for the district of Minnesota.

Term minutes, June term, A. D. 1900, July 23d, 1900.

MONDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. William Lochren, Hon. Charles F. Amidon, judges; Hon. Robert G. Evans, U. S. district attorney; Hon. William H. Grimshaw, U. S. marshal; Henry D. Lang, clerk.

SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha H. Flinn, and Temple E. Dorr,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Croswell.

Duluth case No. 254. Before Judge Lochren.

This cause coming on to be heard upon the notice heretofore
340 given returnable on the 23rd day of July, A. D. 1900, at ten o'clock in the forenoon at the Federal court room in the city of St. Paul, Minnesota, to have settled the form of the decree in this cause, the parties appear by their respective solicitors. M. H. Stanford, esq., appearing for the complainants and Robert G. Evans, esq., appearing for the defendants, and after hearing the statements and arguments of the solicitors for the respective parties and upon certain consents and agreements made in open court, the court settles and signs the form of decree to be entered in this cause.

* * * * * * *

A true record.
Attest: HENRY D. LANG, *Clerk.*

UNITED STATES OF AMERICA,
District of Minnesota, third division, ss.:

I, Henry D. Lang, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such clerk, and that the said paper writing is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as clerk, and the seal of said court. Done at my office in Saint Paul, Minnesota, this 24th day of July, A. D. 1900.

[SEAL OF THE COURT.] HENRY D. LANG, *Clerk,*
By LOUISE B. TROTT, *Deputy.*

(Indorsed:) Filed July 25", 1900. Henry D. Lang, clerk, by Margaret McKay, deputy.

UNITED STATES OF AMERICA.

United States circuit court, district of Minnesota, eighth judicial circuit, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha H. Flinn, and Temple E. Dorr, complainants,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Croswell, defendants.

In equity. Decree.

This cause having been brought to a final hearing upon pleadings and proofs before said court, at the October, 1899, term thereof, and M. H. Stanford having been heard on the part of the complainants, and Robert G. Evans, United States district attorney, John R. Vanderlip, and W.

F. Bailey on the part of the defendants, and the same having been duly considered by the court, it is found and hereby ordered, adjudged, and decreed:

341 That the complainants are the grantees and owners, by mesne conveyances from the patentees, of the title of record and, in fact, to the following-described fractional lots, situate in township fifty-seven (57) north, range seventeen (17) west, in the county of St. Louis, State of Minnesota, to wit: Lots one (1), two (2), and three (3) of section two (2), lots one (1) and two (2) of section three (3), lots one (1) and eight (8) and portions of lots three (3), five (5), and six (6) of section four (4); lots one (1), two (2), three (3), and four (4) of section nine (9); lots one (1), two (2), three (3), and four (4) of section ten (10), and lot three (3) of section eleven (11), being the same lands which are more particularly described in the complainants' bill of complaint herein; and that said above-described fractional lots extend to and are bounded by and upon the actual waters of Cedar Island Lake.

It is further ordered, adjudged, and decreed that the defendants have no jurisdiction or authority to meddle with said lands or to make the survey complained of in the bill of complaint herein; and

It is further ordered, adjudged, and decreed that the injunction heretofore issued in this cause be and the same is hereby made perpetual, and that the said defendants and their successors, representatives, and assigns be and they are hereby severally and perpetually restrained and enjoined from surveying or causing to be surveyed the lands hereinbefore described, or any part thereof.

It is further ordered, adjudged, and decreed that the complainants recover costs against the defendants in favor of the complainants in the Supreme Court of the United States in this action, according to the mandate and order of the United States circuit court of appeals, dated October 4, 1898, for the sum of ninety-nine dollars ($99.00), now of record in this court.

July 23, 1900. WM. LOCHREN, *Judge*.

(Indorsed:) Filed July 25", 1900. Henry D. Lang, clerk, by Margaret McKay, deputy. Ent'd term minutes, vol. 3, pp. 75–6–7, Oct. 9", 1900.

UNITED STATES OF AMERICA.

United States circuit court, district of Minnesota, eighth judicial circuit, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. FLINN, and TEMPLE E. DORR, complainants,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and THOMAS H. CROSWELL, respondents.
} Petition for appeal.

342 The above-named respondents, conceiving themselves aggrieved by the decree of the circuit court above named, dated the 25th day of July, A. D. 1900, and duly entered in said cause, by direction of the Department of Justice of the United States Government

hereby appeal from said decree to the United States circuit court of appeals for the eighth circuit; and they pray that this, their appeal, may be allowed, and that a transcript of the record and papers and proceedings upon which said decree was made and entered, duly authenticated, may be sent to the United States circuit court of appeals for the eighth circuit; and that said decree may be by said circuit court of appeals reversed.

Dated December 3rd, A. D. 1900.

ROBERT G. EVANS,
United States Attorney, Solicitor for Respondents.

W. F. BAILEY and JOHN R. VANDERLIP,
Of Counsel.

On this 3rd day of December, A. D. 1900, it is ordered that the appeal be allowed in the above-entitled cause, as prayed for in the foregoing petition, and it appear-' that said appeal is taken pursuant to direction of the Department of Justice of the United States, no bond is required.

WM. LOCHREN,
District Judge, of the District of Minnesota, holding the Circuit Court.

(Indorsed:) Filed December 3", 1900. Henry D. Lang, clerk, by Margaret McKay, deputy clerk.

UNITED STATES OF AMERICA.

United States circuit court, district of Minnesota, eighth jndicial circuit, fifth div'sion.

SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha A. Flinn, and Temple E. Dorr, complainants,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Croswell, defendants.
} Assignment of errors.

Come now the respondents in the above-entitled cause and file the following assignment of errors, upon which they and each of them rely:

First. That said circuit court erred in making and entering its decree, dated July 25th, 1900, in this action, for the reason that said court had no jurisdiction of the subject-matter of said suit authorizing the making and entering of such decree.

343 Second. That said circuit court erred in making and entering its decree, in this action, dated July 25th, 1900, for the reason that said circuit court had no jurisdiction of the respondents.

Third. That said circuit court erred in making and entering its decree, in this action, dated July 25th, 1900, perpetually restraining the respondents from making a survey of the land referred to in the bill, for the reason that said decree was not justified by the facts found by the court and appearing in the record.

Fourth. That said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, perpetually restraining the defendants from making a survey of the land referred to in the bill, for the reason that said decree, under the facts found by the court and appearing in the record, was not justified by law.

Fifth. That said circuit court erred in not dismissing the bill of complaint herein upon the merits as disclosed by the record and proceedings herein.

Sixth. That said circuit court erred in not dismissing the bill in this action for the reason that it appears upon the face of said bill that it does not state any cause of action of which said court could take cognizance.

Seventh. That said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, perpetually restraining the respondents from making a survey of the lands referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed facts in the record that they were not sufficient to invoke the equitable jurisdiction of said court.

Eighth. The said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, perpetually restraining the defendants from making a survey of the lands referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed fact that no irreparable injury to the complainants will follow from the acts of the respondents in making a survey of the lands in question.

Ninth. That the said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, perpetually restraining the respondents from making a survey of the lands referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed evidence appearing in the record and as an established fact that the decree as rendered will not prevent a multiplicity of suits.

344 Tenth. That the said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, perpetually restraining the respondents from making a survey of the lands referred to in the bill of complaint, for the reason that said decree was not justified by the facts established by the undisputed evidence and appearing in the record.

Eleventh. That the said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, perpetually restraining respondents from making a survey of the lands referred to in the bill, for the reason that it affirmatively appears from the undisputed facts appearing in the record that the complainants had no right, title, or interest in the lands to be surveyed as charged in the bill, and were not entitled to maintain the suit or to the relief granted by the decree.

Twelfth. That the said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, for the reason that said court had no power or jurisdiction to restrain or enjoin the survey of the lands described in said bill of complaint as ordered by the Interior Department, said department being an executive branch of the Government of the United States, and as such having sole charge of the public lands thereof.

Thirteenth. That the said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, for the reason that the

undisputed facts appearing in the record show that the complainants herein were not purchasers in good faith of the lands described in the bill of complaint.

Fourteenth. That said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, in holding that the patentees under whom complainants claim title to the lands described in said bill of complaint had no notice or knowledge of any fraud or misconduct in the making of the survey and field notes set out in the record herein, and that they were purchasers in good faith of the lands in question.

Fifteenth. That said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, in finding that the complainants, at the time they claimed to have purchased the lands described in the bill of complaint, had no notice of the fraud and irregularities of the pretended survey of the lands.

Sixteenth. That said circuit court erred in making and entering its decree in this action, dated July 25th, 1900, for the reason that it appears from the undisputed facts of record herein that complainants and those under whom they claim had full notice and knowledge of the facts that no survey had ever been made of the lands described in said bill of complaint.

345 Wherefore the said respondents pray that the decree entered in this cause in the above-entitled court be vacated and set aside, and that the said circuit court be ordered to dismiss the bill of complainants herein with costs or to take such other action in the case as may be directed by the said circuit court of appeals for the eighth circuit.

ROBERT G. EVANS,
United States Attorney, Solicitor for Respondents.

W. F. BAILEY and JOHN R. VAN DERLIP,
Of Counsel.

(Indorsed:) Filed Dec. 3", 1900. Henry D. Lang, clerk. By Margaret McKay, deputy clerk.

In the United States circuit court in and for the district of Minnesota, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. Flinn, and Temple E. Dorr, complainants,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Crosswell, respondents.
} Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause and their respective counsel that the printed record as used on the final hearing in this case, in the United States circuit court, fifth division, district of Minnesota, with the decision, decree, the record of hearing, and proceedings on appeal, shall constitute the return of the

court below to the circuit court of appeals, eighth circuit, in the appeal in this case.

M. H. STANFORD,
Solicitor for Complainants.
ROBT. G. EVANS,
Solicitor for Respondents.

Dated Dec. 14, A. D. 1900.

(Indorsed:) Filed December 17", 1900. Henry D. Lang, clerk. By Margaret McKay, deputy clerk.

In the United States circuit court in and for the district of Minnesota, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. Flinn, and Temple E. Dorr, complainants,
vs.
P. H. KINWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Croswell, respondents.
} Stipulation.

It is hereby stipulated and agreed by and between the parties in
346 this cause that an order may be made directing the clerk of the United States circuit court to transmit to the clerk of the United States circuit court of appeals, eighth circuit, complainants' original Exhibit D and defendants' original Exhibit No. 1, to be used in the hearing of the appeal in the United States circuit court of appeals, and thereafter said exhibits are to be returned to the clerk of the United States circuit court for the district of Minnesota.

M. H. STANFORD,
Solicitor for Complainants.
ROBT. G. EVANS,
Solicitor for Respondents.

Dated Dec. 14, 1900.

On reading the above stipulation it is hereby ordered that the clerk of the United States circuit court transmit complainants' original Exhibit D and defendants' original Exhibit No. 1 to the clerk of the United States circuit court of appeals, 8th circuit, to be used on the hearing of the appeal in said case, and thereafter said exhibits are to be returned to the clerk of the United States circuit court for the district of Minnesota.

WM. LOCHREN, *Judge.*

Dated St. Paul, Dec. 19, 1900.

(Indorsed:) Filed Dec. 20, 1900. Henry D. Lang, clerk. By Margaret McKay, deputy clerk.

UNITED STATES OF AMERICA.

United States circuit court, district of Minnesota, eighth judicial circuit, fifth division.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. Flinn, and Temple E. Dorr, complainants,
vs.
P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Croswell, respondents.
} Citation.

United States of America, to Simon J. Murphy, George O. Robinson, Elisha A. Flinn, and Thomas E. Dorr, greeting:

You and each of you are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court, wherein P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal men-
347 tioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the honorable William Lochren, judge of the United States district court, this 3rd day of December, A. D. 1900.

WM. LOCHREN,
Judge of the United States District Court.

Due service of the within citation is hereby admitted this 7 day of December, A. D. 1900.

M. H. STANFORD,
Solicitor for Simon J. Murphy, George O. Robinson, Elisha A. Flinn, Temple E. Dorr.

Orig. Entered, No. 254. United States circuit court, district of Minnesota, fifth division. Simon J. Murphy et al. vs. P. H. Kirwan, as U. S. surveyor-general et al., defendant. Citation. Filed December 11", 1900. Henry D. Lang, clerk. By Margaret McKay, deputy clerk.

UNITED STATES OF AMERICA,

Circuit court of the United States, district of Minnesota, fifth division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 359 pages, numbered consecutively from 0 to 359, is a true and complete transcript of the records, process, pleadings, orders, decision, final decree, and all other proceedings in said cause, as stipulated by counsel for all the parties hereto, which said stipulation is included in this record at page 354, and the whole thereof, as appears from the original records and files of said court;

and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Duluth, in the district of Minnesota, this 20th day of December, A. D. 1900.

[Seal.
U. S. circuit court,
dist. of Minnesota.
fifth division.]

HENRY D. LANG, *Clerk*,
By THOS. H. PRESSNELL, *Deputy*.

[Ten cents canceled rev. stamp.]
Filed Dec. 22, 1900. John D. Jordan, clerk.

348 APPEARANCE FOR APPELLANTS.

And on the twenty-sixth day of December, A. D. 1900, an appearance of Mr. Robert G. Evans, as counsel for the appellants, was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

P. H. KIRWAN, SURVEYOR-GENERAL, ETC., ET AL., appellants, *vs.* SIMON J. MURPHY ET AL.	No. 1526.

The clerk will enter my appearance as counsel for the appellants.

ROBERT G. EVANS,
United States Attorney.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1526. P. H. Kirwan, surveyor-general, etc., et al., appellants, vs. Simon J. Murphy et al. Appearance. Filed Dec. 26, 1900, John D. Jordan, clerk. Robert G. Evans, U. S. att'y, counsel for appellants.

APPEARANCE FOR APPELLEES.

And on the twenty-ninth day of January, A. D. 1901, an appearance of counsel for the appellees was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISH H. Flinn, and Temple E. Dorr, respondents, *vs.* P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENeral for the district of Minnesota, and Thomas H. Croswell, appellants.	In equity. Precepie for appearance.

The clerk of this court will please enter my appearance as solicitor and counsel for respondents in the above-entitled case.

Dated January 28", 1901.

M. H. STANFORD,
Solicitor and Counsel for Respondents.

349 To JOHN D. JORDAN,
Clerk of sd. court:

(Endorsed:) 1526. United States circuit court of appeals. In equity. Eighth circuit. Simon J. Murphy et al., respondents, vs. P. H. Kirwan, U. S. surveyor-gen. for district of Minnesota, and another, appellants. Appearance appellees. Filed Jan. 29, 1901. John D. Jordan, clerk. M. H. Stanford, solicitor and counsel for respondents, Duluth, Minn. Office, 401 and 2 Exchange Bldg.

APPEARANCE FOR APPELLANTS.

And on the fourteenth day of May, A. D. 1901, an appearance of Mr. W. F. Bailey, as counsel for the appellants, was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

P. H. KIRWAN, U. S. SURVEYOR-GENERAL, et al., appellants, *vs.* SIMON J. MURPHY ET AL. } No. 1526.

The clerk will enter my appearance as counsel for the appellants.
W. F. BAILEY.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1526. P. H. Kirwan, etc., et al. appellants, vs. Simon J. Murphy et al. Appearance. Filed May 14, 1901. John D. Jordan, clerk. W. F. Bailey, Eau Claire, Wis., counsel for appellants.

ORDER OF SUBMISSION.

And on the fifteenth day of May, A. D. 1901, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit, May term, 1901.

WEDNESDAY, *May 15, 1901.*

350 P. H KIRWAN, AS UNITED STATES surveyor-general, etc., et al., appellants, *vs.* SIMON J. MURPHY ET AL. } No. 1526. Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. W. F. Bailey for the appellants and concluded by Mr. M. H. Stanford for the appellees.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

OPINION.

And on the twentieth day of May, A. D. 1901, an opinion of said United States circuit court of appeals was filed in said cause, in the words and figures following, to wit:

351 United States circuit court of appeals, eighth circuit.

P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Crosswell, appellants,
vs.
SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha A. Flinn, and Temple E. Dorr, appellees.

No. 1526. May term, A. D. 1901. Appeal from the circuit court of the United States for the district of Minnesota.

Mr. W. F. Bailey (Mr. Robert G. Evans and Mr. John R. Vanderlip were with him on the brief) for appellants.

Mr. M. H. Stanford for appellees.

Before Sanborn and Thayer, circuit judges, and Adams, district judge.

SANBORN, circuit judge, delivered the opinion of the court.

The facts presented by the record upon the final hearing of this case do not differ essentially from those presented on the appeal from the order granting the injunction. Kirwan v. Murphy, 83 Fed., 272, 286, 289; Murphy v. Kirwan, 103 Fed., 104. The United States surveyed and platted the land about Cedar Lake and then patented the tracts which the complainants now own, according to its plats, which showed that these tracts extended to and were bounded by the lake. It made no attempt to correct its survey, and gave no warning that it claimed it to be erroneous until after the complainants had purchased of its patentees and had paid full value for the land on the theory that it extended to and bordered upon the lake, and in reliance upon the plats and patents of the Government which disclosed this fact. It is too late now for the United States to correct this survey and thereby to revoke its grants after innocent purchasers have bought of its patentees in reliance upon them. Our views upon the questions presented here have been
352 so completely expressed in the opinions in Kirwan v. Murphy, 83 Fed., 272, 286, 289, and Murphy v. Kirwan, 103 Fed., 104, that another opinion would be but a repetition of the rules and reasoning there set forth. The decree below is accordingly affirmed on the authority of those opinions and of Railroad Co. v. Schurmeier, 74 U. S., 272, 286, 289; Hardin v. Jordan, 140 U. S., 371, 380; Mitchell v. Smale, 140 U. S., 406, 414; Cragin v. Powell, 128 U. S., 691, 696, 697, 699; McIvers' Lessee v. Walker, 9 Cranch, 173–177; St. Paul, Stillwater & Taylor's Falls R. Co. v. First Division R. Co., 26 Minn., 31, 34, and United States v. Winona & St. Peter Railroad Co., 67 Fed., 948, 960–964.

Filed May 20, 1901.

353 DECREE.

And on the twentieth day of May, A. D. 1901, in the record of the proceedings of said United States circuit court of appeals is a decree in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit, May term, 1901.

MONDAY, *May 20, 1901.*

P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Crosswell, appellants,
vs.
SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. Flinn, and Temple E. Dorr.

No. 1526. Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court, in this cause, be, and the same is hereby, affirmed without costs to either party in this court.

May 20, 1901.

PETITION FOR AND ORDER ALLOWING APPEAL.

And on the eighth day of August, A. D. 1901, there was filed in the clerk's office of said circuit court of appeals a petition for and order allowing an appeal to the Supreme Court of the United States, in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

354 P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Croswell, appellants,
vs.
SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. Flinn, and Temple E. Dorr, appellees.

No. 1526. Petition for appeal.

The above-named appellants, conceiving themselves aggrieved by the decree of the United States circuit court of appeals, eighth circuit, entered in said case on the 20th day of May, 1901, by direction of and under the authority of the Department of Justice of the United States of America, hereby appeal from said decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed and that a transcript of the record, proceedings, papers, and maps upon which said decree was made and entered, duly authenticated, may be sent to the United States

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Supreme Court, and that said decree may be by said United States Supreme Court reversed.

Dated August 1st, 1901.

ROBERT G. EVANS,
Attorney of the United States for the District of Minnesota,
Solicitor for Appellants.

W. F. BAILEY and JOHN R. VANDERLIP,
Of Counsel.

On this eighth day of August, A. D. 1901, it is ordered, that the appeal be allowed in the above-entited case as prayed for in the foregoing petition, and it appearing that said appeal is taken pursuant to direction of the Department of Justice of the United States no bond is required.

AMOS M. THAYER,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

(Endorsed:) United States circuit court of appeals, eighth circuit. No. 1526. P. H. Kirwan, as U. S. surveyor-general for the district of Minnesota, and Thomas H. Croswell, appellants, vs. Simon J. Murphy et al., appellees. Petition for and order allowing an appeal to Supreme Court U. S. Filed Aug. 8, 1901. John D. Jordan, clerk.

355

ASSIGNMENT OF ERRORS.

And on the eighth day of August, A. D. 1901, there was filed in the clerk's office of said circuit court of appeals an assignment of errors, in said cause, in the words and figures following, to wit:

United States circuit court of appeals, eighth circuit.

P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Croswell, appellants, *vs.* SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. FLINN, and TEMPLE E. DORR, appellees.	No. 1526. Assignment of errors.

And now in the foregoing-entitled case and at the time of filing therein their petition for appeal, come the said appellants, P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell, by Robert G. Evans, esq., attorney of the United States for the district of Minnesota, hereunto lawfully authorized and directed by the honorable Attorney-General of the United States, and say that in the record and proceedings in the above-entitled case there is manifest error in this, to wit, that the circuit court of appeals erred:

First. In holding that the circuit court of the United States for the district of Minnesota had jurisdiction of the subject-matter of said suit authorizing the making and entering of the decree affirmed by said circuit court of appeals.

Second. In holding that the said circuit court of the United States had jurisdiction of the appellants.

Third. In affirming the decree of the said circuit court for the district of Minnesota, perpetually restraining appellants from making a survey of the land referred to in the bill, for the reason that said decree was not justified by the facts found by the circuit court and appearing
356 in the record.

Fourth. In making and entering its decree in this case dated May 20th, 1901, perpetually restraining appellants from making a survey of the land referred to in the bill of complaint, for the reason that said decree, under the facts found by the court before which said cause was tried and appearing in the record, was not justified by law.

Fifth. In affirming the decree entered in this case by the said circuit court of the United States for the district of Minnesota, for the reason that upon the merits as disclosed by the record and proceedings herein said decree should have been reversed.

Sixth. In affirming the decree rendered by the circuit court of the United States for the district of Minnesota, for the reason that it appears upon the face of said bill in said action that it does not state any cause of action of which said court could take cognizance.

Seventh. In affirming the decree made by the said circuit court for the district of Minnesota, perpetually restraining appellants from making a survey of the land referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed facts in the record that they were not sufficient to invoke the equitable jurisdiction of the said circuit court.

Eighth. In affirming the decree entered by the said circuit court for the district of Minnesota, perpetually restraining the appellants from making a survey of the land referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed facts that no irreparable injury to the appellees will follow from the acts of the appellants in making a survey of the land in question.

Ninth. In affirming the decree of the said circuit court for the district of Minnesota, perpetually restraining the appellants from making a survey of the land referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed evidence as appearing in the record and as an established fact, that the decree as rendered will not prevent a multiplicity of suits.

357 Tenth. In affirming the decree of the said circuit court for the district of Minnesota, perpetually restraining appellants from making a survey of the land referred to in the bill of complaint, for the reason that said decree was not justified by the facts established by the undisputed evidence and appearing in the record.

Eleventh. In affirming the decree of the said circuit court for the district of Minnesota, perpetually restraining appellants from making a survey of the lands referred to in the bill of complaint, for the reason that it affirmatively appears from the undisputed facts appearing in the record that the appellees have not and have never had any right, title, or interest in the lands to be surveyed, and were not entitled to commence or maintain the suit or to the relief granted by the decree.

Twelfth. In affirming the decree of the said circuit court for the district of Minnesota, for the reason that said court had no power or jurisdiction to restrain or enjoin a survey of the lands described in said bill of

complaint, as ordered by the Interior Department of the United States, said Department being an executive branch of the Government of the United States, and as such having sole charge of the public lands thereof.

Thirteenth. In affirming the decree of the said circuit court for the district of Minnesota, for the reason that the undisputed facts appearing in the record show that the appellees herein were not purchasers in good faith of the lands described in the bill of complaint.

Fourteenth. In affirming the decree of the said circuit court for the district of Minnesota, holding that the patentees, from whom the appellees claimed title to the land described in said bill of complaint, had no notice or knowledge of any fraud or misconduct in the making of the survey and field notes set out in the record herein, and that they were purchasers in good faith of the land in question.

Fifteenth. In affirming the decree of the said circuit court of the United States for the district of Minnesota, holding that the appellees at the time they claimed to have purchased the lands described in the bill of complaint had no notice of fraud or irregularities of the pretended
358 survey of the lands therein described.

Sixteenth. In affirming the decree of the said circuit court for the district of Minnesota, for the reason that it appears from the undisputed facts of record herein that the appellees herein and those under whom they claimed had full notice and knowledge of the facts that no survey had ever been made of the lands described in said bill of complaint.

Seventeenth. In holding that the United States had made no attempt to correct its survey and gave no warning that it claimed it to be erroneous until after the appellees had purchased of its patentees and had paid full value for the land, on the theory that it extended to and bordered upon the lake, and in reliance upon the plats and patents of the Government which disclosed this fact, for the reason that it appears from the evidence and record in this case that no survey of the lands described in the bill was ever made, and that the purchasers of said land had full knowledge and notice of the fact that no survey had been made.

Eighteenth. In holding that it is too late now for the United States to correct said survey and thereby to revoke its grants, after innocent purchasers have bought of its patentees in reliance upon them, for the reason that no survey of the lands described in the bill was ever made, that the United States is not subject to laches, and that it does not appear in this case that the persons claiming to hold said lands are innocent purchasers, but, on the contrary, it appears that they and their predecessors, from whom they bought, and the patentees of the United States, had full knowledge and notice that no survey of said lands had been made and of the fraud and mistake in the making of a pretended survey of said lands.

Nineteenth. In making and entering its decree herein, dated May 20th, 1901, for the reason that it affirmatively appears from the record, as a matter of fact and law, that the lands attempted and ordered to be surveyed, as stated in the bill of complaint herein, were lands belonging to the Government of the United States, as to which appellees had no right, title, or interest, and for the further reason that the right to determine the time and manner of survey or to correct mistakes in the survey is one belonging to the Government.

359 Twentieth. In making and entering its decree herein for the reason that it affirmatively appears that if the appellees are

entitled to any relief whatever that such relief is enforc'able at law and not in equity.

Wherefore the said appellants pray that the decree of the said circuit court of appeals of the United States for the eighth circuit in the above-entitled case be reversed and set aside.

ROBERT G. EVANS,
Attorney of the United States for the District of Minnesota,
Solicitor for Appellants.

W. F. BAILEY and JOHN R. VAN DERLIP,
Of Counsel.

(Endorsed:) United States circuit court of appeals, eighth circuit. No. 1526. P. H. Kirwan, as U. S. surveyor-general for district of Minnesota, and Thomas H. Crosswell, appellants, vs. Simon J. Murphy, George O. Robinson, Elisha A. Flinn, and Temple E. Dorr, appellees. Assignment of errors. Filed Aug. 8, 1901. John D. Jordan, clerk.

CITATION.

And on the twenty-second day of August, A. D. 1901, there was filed in the clerk's office of said circuit court of appeals, in said cause, a citation the original of which, with admission of service thereon, is hereto attached and herewith returned.

360 United States circuit court of appeals, eighth circuit.

P. H. KIRWAN, AS UNITED STATES SURVEYOR-general for the district of Minnesota, and Thomas H. Croswell, appellants, *vs.* SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. Flinn, and Temple E. Dorr, appellees.	No. 1526. Citation.

United States of America to Simon J. Murphy, George O. Robinson, Elisha A. Flinn, and Temple E. Dorr, greeting:

You and each of you are hereby cited and admonished to be and appear in the United States Supreme Court, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals, wherein P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the honorable Amos M. Thayer, judge of the United States circuit court of appeals, eighth circuit, this 8th day of Aug., A. D. 1901.

AMOS M. THAYER,
United States Circuit Judge, Eighth Circuit.

Due service of the within citation is hereby admitted this 12th day of Aug., A. D. 1901, at Duluth, Minn.

M. H. STANFORD,
Solicitor for Simon J. Murphy, George O. Robinson, Elisha A. Flinn, and Temple E. Dorr.

361 (Indorsed:) Original. United States circuit court of appeals, eighth circuit. No. 1526. P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell, appellants, vs. Simon J. Murphy, George O. Robinson, Elisha A. Flinn, and Temple E. Dorr, appellees. Citation filed Aug. 22, 1901. John D. Jordan, clerk.

362 CLERK'S CERTIFICATE.

United States circuit court of appeals, eighth circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing three hundred and sixty-two pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, except the petition of the appellants for an injunction pendente lite and the order denying said petition, in the case of P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell, appellants, vs. Simon J. Murphy et al., appellees, No. 1526, May term, 1901, as full, true, and complete as the same remain on file and of record in my office.

I do further certify that the original citation, with admission of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals at the city of St. Louis, Missouri, this twenty-third day of August, A. D. 1901.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals For the Eighth Circuit.

363 (Indorsement on cover:) File No., 18261. U. S. circuit ct. of appeals, 8th circuit. Term No., 408. P. H. Kirwan, as United States surveyor-general for the district of Minnesota, and Thomas H. Croswell, appellants, vs. Simon J. Murphy, George O. Robinson, Elisha A. Flynn, and Temple E. Dorr. Filed September 6, 1901.

O

Supreme Court, U. S.
FILED
JAN 10 1903
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and THOMAS H. CROSWELL, appellants,

v.

SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha A. Flinn, and Temple E. Derr, appellees.

No. 161.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

BRIEF AND ARGUMENT FOR APPELLANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL for the district of Minnesota, and Thomas H. Croswell, appellants,

v.

SIMON J. MURPHY, GEORGE O. ROBINSON, Elisha A. Flinn, and Temple E. Dorr, appellees.

No. 161.

BRIEF AND ARGUMENT FOR APPELLANTS.

STATEMENT.

This suit arose upon a bill of complaint filed in the United States circuit court, district of Minnesota, by appellees, claiming to own certain lands in sections 2, 3, 4, 9, 10, 11, in township 57 north, range 17 west, fourth principal meridian, Minnesota, against appellants, the United States surveyor-general, district of Minnesota, and a deputy surveyor, to enjoin them from surveying, by direction of the Commissioner of the General Land Office, said lands, claimed by the land department to be unsurveyed public lands of the United States.

15046—03——1

June, 1876, Deputy Surveyor Howe, under a contract for survey of this township, made return of a survey whereby these sections were returned as containing Cedar Island Lake, its meanders and the abutting lands being returned as shown in the printed record, page 15, the lake covering about 1,800 acres. The lake was in fact of about 1,202 acres less extent, lying within Howe's meander line, as shown on plat "A" annexed to Exhibit C (Record, pp. 22 and 143). The real body of water touched the meander line at but three points, all on the north shore of the lake, two of which are upon the north township line. In 1892 the United States surveyor-general for Minnesota, on petition of settlers, recommended a resurvey of the township. This was opposed by those claiming to own the lands abutting on the Howe meander line. There was a hearing, and the contest ended in an order and contract for a survey.

Thereupon appellees filed their bill (Record, p. 1), alleging that they owned lots 1, 2, 3, section 2; 1, 2, section 3; 1, 8, and parts of 6 and 7, section 4, and certain described parts of sections 9, 10, and 11 in this township, deriving title through mesne conveyances and patents from the Government; that the land was surveyed in June, 1876, and the record of survey and field notes were approved by the United States surveyor-general, August 7, 1876, and a plat therefrom was by him duly made and submitted to the Commissioner of the General Land Office; that complaint was filed against the accuracy and good faith of the survey,

which the Commissioner dismissed, and June 11, 1879, approved the survey and plat, which were duly filed, and are the only survey and plat of that township ever made or adopted by the Government, and upon them the Government sold and disposed of all the land in the township; that the survey, field notes, and plat made therefrom were inaccurate and do not correctly show the location and subdivisions of land and water in the township, for that Cedar Island Lake, a boundary of parts of complainants' lands, is smaller and several of complainants' fractional lots are larger and others are smaller than shown on the plat (record, p. 8); that complainants purchased said lands for value as extending to the lake upon an estimate of the timber thereon, without knowledge of inaccuracy or fraud in the survey; that the consideration inducing such purchase was that the land bordered the lake, and they owned other timbered lands the timber from which could be brought to market by floating through the lake and its outlet through the St. Louis River, then the only means of transport; that in 1892 certain intrusive settlers, knowing complainants' right and claim, petitioned for the survey of said lands, and that an order and contract therefor had been made, and the survey was about to commence. The bill then avers, as the only grounds of equity jurisdiction (record, p. 11):

> That by a new survey of said lands your orators will be put to great and vexatious litigation in making proof of their title in actions against parties who are wholly irresponsible.

That a very large amount of the timber standing as aforesaid on the land of your orators and owned by them will be destroyed in the making of such proposed survey and the remainder thereof exposed to damage by fire by reason of said resurvey and your orators will be thereby irreparably injured.

The prayer (record, p. 13) was that the—

surveyor-general, his agents, attorneys, solicitors, and servants may be restrained by the order and injunction of this honorable court from entering into any contract for the survey of the lands herein described, or from surveying the same, or from taking any action for a survey of said lands or any part thereof, and that boundaries of said lands of your orators may be defined and set out in the decree and order of this honorable court and that all necessary direction may be given them for that purpose and to establish the boundaries of said lands and that your orators may be protected in the use and enjoyment of such lands so owned by them as aforesaid extending to and including the shores of said Cedar Island Lake and to the center of said lake, and that said defendant and his successors in office may be perpetually enjoined from letting said contract for the survey of said land or any part thereof, and from surveying the same or any part thereof, and that your orators may have such other and further relief as to this court may seem meet.

The appellants answered (Record, p. 36) admitting the making of a contract for survey of the unsurveyed

lands in these sections lying between Howe's purported meander line and Cedar Island Lake; that in 1876 a contract was made with one Howe for survey of the township, and that he returned the field notes of a pretended survey, from which a plat was made and approved, but averring that Howe surveyed only the exterior lines of the township, and in fact made no subdivision thereof or survey of the lands within it; that his field notes were false, fraudulent, and fictitious, and the plat made therefrom was false and incorrect; admitting that the survey and plat were approved by the Commissioner of the General Land Office after complaint to him of its inaccuracy, but not until after withdrawal of the charge of inaccuracy by the person making it; admitting that Exhibit A (Record, p. 15) is a true copy of such approved plat; denying that all of said lands were disposed of by the Government, and alleging that about 1,200 acres of land in these sections were never disposed of and are still unsurveyed, lying between Cedar Island Lake and the lots described, all of which unsurveyed land is the land referred to and is, by the plat (Exhibit A) made from Howe's field notes, indicated as part of Cedar Island Lake; alleging that no lots conveyed to plaintiffs are smaller than shown on the plat; that the true relative size and contour of the lake to that shown on the plat is shown on Exhibit B (Record, p. 71), and the land between the lake and the boundary line (Howe's meander) of the fractional lots is the 1,200 acres of unsurveyed Government land referred

to; denies the good faith of complainants' purchase; alleges complainants' full participation in the contest proceedings resulting in the decision (20 Land Decisions, 28) and order for survey of these lands, and that the Commissioner and Secretary of the Interior had full jurisdiction to pass upon the question and to make the decision and order. The answer denies that timber on complainants' land will be destroyed or damaged in making such survey, and denies every averment of the bill, except as in the answer averred or denied.

Upon the issues formed trial was had in the circuit court, which (Record, pp. 331–333) found:

> 1. On or about April 26, 1876, a contract for the survey of all lands in township 57 north, of range 17 west, in Saint Louis County, Minn., was made by the Government of the United States with one Henry S. Howe, as a deputy surveyor of the United States, and thereafter said Howe made and filed what purported to be field notes of a survey of said township, from which a purported official plat of said township was thereafter made and approved by the surveyor-general of the United States for the district of Minnesota and by the Commissioner of the General Land Office, of which plat Exhibit A attached to the bill of complaint is a substantially correct copy.
>
> 2. *There is no evidence, nor any marks upon the ground, to indicate that any actual survey of said township 57 was ever made by said Howe, as required by his said contract, and by the rules and regulations of the General Land Office, or at all,*

beyond the running and due marking of the exterior boundary lines of said township, where the section, quarter, and other posts and markings established by him are and always have been clear, distinct, and readily found and traced. There is no evidence on the ground that section lines were ever run by him in or across said township, or section corner posts or quarter posts ever located or set by him, except a corner post at the northwest corner of section thirty-six (36) and a quarter post in the western line of said section thirty-six (36), and there is no evidence that witness trees were ever blazed or marked by him.

3. *Cedar Island Lake is a navigable, deep, and permanent body of water, fed principally by springs, having an area of about nine hundred (900) acres, instead of about eighteen hundred (1,800) acres, as described in the field notes of Howe and shown on said official plat of said township. Instead of the shores of said lake being low and swampy, as stated in said field notes, the banks are generally high and sloping lands, suitable for agriculture, extending around the lake, and support a good growth of pine and other forest trees large enough for lumbering, such as will not grow in water.* The condition was the same in 1876, and no material part of the land surrounding the lake is accretion. Southerly and westerly of said Cedar Island Lake are five other deep, navigable, and permanent lakes in the same township, none of which are shown by the field notes of Howe's survey or upon said Government official plat of said township, and all of which have, since the making of said official

plat, been sold and patented by the Government as land according to said plat.

4. *There is no evidence upon the ground that any meander line of said Cedar Island Lake was ever surveyed by said Howe, or any meander posts placed by him about said lake, except one where the north line of said township encounters said lake. And the outlet of said lake is at a different place from that described in said field notes and shown upon said official plat.* After the making of the said survey and plat, and before its approval, complaints touching the accuracy thereof were made to the Commissioner of the General Land Office, but on the withdrawal of such complaints, the said survey and plat were approved.

5. The land lying between the actual water line of said Cedar Island Lake and the meander line of that lake, as delineated on said official plat of said township, comprises the land in controversy in this suit, and is the same land directed to be surveyed by the Commissioner of the General Land Office and referred to in the surveyor's contract, being therein described as "the public lands situate in sections 2, 3, 4, 9, 10, and 11, in township No. 57 north, R. 17 west, of the fourth principal meridian, lying between the 'old meander boundary of Cedar Island Lake,' as given by the original field notes of Henry S. Howe, United States deputy surveyor, approved by the surveyor-general of Minnesota August 19, 1876, and the shore line of said Cedar Island Lake."

6. Prior to the commencement of this suit the United States has sold, and by its patents

has conveyed, to the purchasers, according to said official plat made from said Howe survey, all the land in said township 57, as the same appeared upon said plat; to which plat all of said patents expressly referred, it being then and still the only Government plat of said township.

7. The complainants are the grantees and owners by mesne conveyances from the patentees of the record title to the following-described fractional lots in said township, to wit: Lots one (1), two (2), three (3), in section two (2); lots one (1) and two (2), in section three (3); lots one (1) and eight (8), and portions of lots three (3), five (5), and six (6), in section four (4); lots one (1), two (2), three (3), and four (4), in section nine (9); lots one (1), two (2), three (3), and four (4), in section ten (10); and lot three (3), in section eleven (11), being the same lands which are more particularly described in complainants' bill; and each of which fractional lots appear and are represented on said official plat as bounded by and upon said Cedar Island Lake.

8. So far as appears, none of the patentees of said lands had any notice or knowledge of any fraud or misconduct on the part of said Howe in or about the making of said survey and field notes, and all were purchasers in good faith of said lands.

9. Complainants purchased said fractional lots of land of the patentees of their grantees for the pine timber thereon, and the convenience of landing the same in the said Cedar Island Lake, to be driven to the place of manufacture; *and before such purchase in the year 1883, caused said*

lands to be explored and examined by an experienced timber estimator, who in making such examination, as is customary in such cases, used a copy of said official plat of said township which did not have upon it any statement of the acreage or amount of land in any of the subdivisions; and who reported to the complainants his estimate of the amount of pine timber on said lands, and the general character of said land, and the riparian character thereof as bounded upon said Cedar Island Lake; but did not discover or report any fraud or error in the survey of said township, or any error or mistake in the said official plat. And the said complainants purchased, paid for and took conveyances of said lands in good faith, and without any notice or knowledge of any such fraud, error, or mistake.

The court, after description of the lands (Record, p. 339), decreed:

* * * and that said above-described fractional lots extend to and are bounded by and upon the actual waters of Cedar Island Lake.

It is further ordered, adjudged, and decreed that the defendants have no jurisdiction or authority to meddle with said lands or to make the survey complained of in the bill of complaint herein; and

It is further ordered, adjudged, and decreed that the injunction heretofore issued in this cause be, and the same is hereby, made perpetual, and that the said defendants and their successors, representatives, and assigns be, and they are hereby, severally and perpetually restrained and enjoined from surveying or caus-

ing to be surveyed the lands hereinbefore described, or any part thereof.

This decree was, upon appeal, affirmed by the circuit court of appeals, eighth circuit (Record, p. 348), and the case is brought to this court by further appeal (Record, p. 348).

QUESTIONS PRESENTED.

The questions presented upon the record are:

1. The power of the Land Department to make the proposed survey, it being a conceded and ascertained fact that the interior of the township was never surveyed; and to what extent is the Government bound by the fraud or intentional violation of law by its surveyor.

2. The boundary of the fractional lots specified in the bill, or the effect of the plat and of the Federal statutes regulating surveys of the public lands in view of the facts.

3. The effect of fraud or mistake in a survey upon subsequent purchasers from patentees.

4. Whether complainants are not upon the facts chargeable with notice of fraud in the survey and inaccuracy of the plat.

5. The effect of the decision of the Land Department upon the contest as *res adjudicata* upon the facts.

6. The jurisdiction of the circuit court in equity to entertain the bill and give the relief granted by the decree.

7. The power of the court to control the action of the officers of the Land Department.

SPECIFICATION OF ERRORS.

The court erred:

First. In holding that the circuit court had jurisdiction to restrain appellants from making a survey of said lands, which, as shown by the record, are unsurveyed public lands of the United States.

Second. In not reversing the decree of the circuit court, and not directing a dismissal of the bill, for the reason that it affirmatively appears from the admitted and established facts in the record that appellees have never had any right, title, or interest in the lands proposed to be surveyed, and were not entitled to any relief.

Third. In holding that the United States had made no attempt to correct its survey of said lands and had given no warning that it claimed the survey to be erroneous until after appellees had purchased of its patentees for full value, in reliance on the survey and plat, for the reason that it appears from the record that no survey of said lands was ever made, of which fact said purchasers had full knowledge and actual notice.

Fourth. In affirming the decree of the circuit court, for the reason that said court had no jurisdiction to enjoin a survey of said land as ordered by the Interior Department of the Government of the United States, which has sole charge of the public land of which the lands in question are a part.

Fifth. In holding it is now too late for the Government to correct said survey, for the reason that no survey of said lands was ever made, and laches are not

imputable to the Government in the survey of its public lands.

Sixth. In not reversing said decree, and not directing a dismissal of the bill, for the reason that said suit is in substance and effect a suit against the United States for specific performance of a fraudulent representation of a subordinate officer, whose fraud does not conclude the Government, and the United States has not consented to be sued in such case.

Seventh. In affirming the decree of the circuit court, for the reason that no equity was alleged in the bill of complaint, because if appellees own said lands, as claimed,

(1) They have adequate remedy at law;

(2) No liability to irreparable injury is shown;

(3) Nor continuing trespass or nuisance;

(4) Multiplicity of suits will not be prevented;

(5) The adverse claimants, settlers on said lands, are not made parties to the bill, and a decree in the suit will not conclude them or quiet title;

(6) Appellees and their grantors, before their purchase, had full knowledge and notice that no survey had been made, and did not purchase in good faith.

Eighth. In not reversing said decree, and in not holding that for all purposes of administration appellees were concluded by the contest proceeding, resulting in the order for survey of the lands.

POINTS AND ARGUMENT.

Definition of Controversy. Question of Boundary, not of Riparian Right.

Preliminary to discussion, we insist that the case involves a question of boundary only, and presents no question of riparian right. It is a singular feature of the case that heretofore counsel in argument, and the courts in the decrees and opinions, have failed to recognize the broad and established distinction that exists between the effect of a true meander line actually run approximately along a body of water or other obstruction found in an actual survey, and a false or fictitious meander line, which for fraud or mistake is a mere random line and false call, and does not delimit or have approximate contiguity to any body of water, reservation, or obstruction found in the survey.

Riparian rights are those rights which arise to a riparian proprietor by virtue of his title and ownership of the shore. They are incident to the ownership of the shore itself, and have no existence but as an incident to such ownership. Among riparian rights are those to accretion and to right of access to the water, and it is fundamental that one claiming riparian right must first show that he owns the shore. *Bates* v. *Illinois Central R. R. Co.* (1 Black., 204, 208); *Niles* v. *Cedar Point Club* (175 U. S., 300, 308); *Lamprey* v. *State* (52 Minn., 198); *Grant* v. *Hemphill* (192 Ia., 218).

The question here is not of rights incidental to an ownership of the shore, but whether appellees are

owners of the shore or are owners only of those tracts bounded by a line laid at random on a plat and purporting to delimit a lake, but which in fact was never run, and which if run where it purported to have been run would not approximately delimit the lake, but would lie three-fourths of a mile or more from the lake over what then and ever since was high, agricultural land, clothed with ancient trees which could not have grown in water. The question, then, is one of boundary simply. It is not disputed that appellees, by their patents, own the fractional lots. The dispute is where those lots terminate—*i. e.*, what is the boundary of appellees' lands.

The power of the Land Department to dispose of the public lands does not arise under the public-land laws until a survey of the lands committed to its administration.

In every act for the disposal of public lands the first step provided to be taken is for their survey for ascertainment of their character and definite subdivision, and ascertainment of areas embraced in them. The land laws generally limit the quantity that can be taken by one individual, or under an entry, and value is fixed according to area, so that a survey is essential to administration of the land laws. Ordinarily lands not surveyed are not subject to disposal. A survey was indispensable under the laws under which appellees claim (sections 2266, 2289, 2354, 2355, and 2415 Rev. Stat.; sec. 3 act May 14, 1880, 21 Stat., 140), and they rest their claim wholly upon Howe's pretended survey.

In *Horne* v. *Smith* (159 U. S., 40, 44), a meander was actually run along a bayou falsely indicated upon the field notes and plat as "Indian River," and the land lying between the bayou and river was left actually unsurveyed. Responding to a claim that a lot bordering on the meandered line should be deemed to extend to the river, the court in that case said:

> * * * It is unnecessary to speculate why it was that it was not surveyed. It may have been a mere oversight, or it may have been because the surveyors thought that the action of the water would soon wash the low land away; but whatever the reason, the *fact is obvious that no survey was made* of that body of land, and *the boundary line fixed* was the water line of the bayou.
>
> * * * * *
>
> [p 45.] *The patent conveys only the land which is surveyed*, and when it is clear from the plat and the surveys that the tract surveyed terminated at a particular body of water, the patent carries no land beyond it. [Citing *Lammers* v. *Nissen*, 4 Nebraska, 245.] In that case it appeared that between the meander line as run and the Missouri River was a tract of several hundred acres, and the court held that as that body of land had not been surveyed it did not pass by a patent of a lot which on the Government plat extended to the meander line. A similar ruling was made in *Glenn* v. *Jeffrey* (75 Iowa, 20).

The rights of a claimant to public lands are measured by the law upon which his claim is founded.

Rector v. *Ashley* (6 Wall., 142); *Frisbie* v. *Whitney* (9 Wall., 187, 197).

It was held in *Wilcox* v. *Jackson* (13 Pet., 498, 517) that:

> * * * whenever the question in any court, State or Federal, is, whether a title to land, which had once been the property of the United States, has passed, that question must be resolved by the laws of the United States.

As the law provides a survey precedent to disposal of lands, one can not claim land never surveyed.

But it is insisted that because there was an approved plat purporting to be based upon a survey, the patent issued making reference to such plat has the effect to convey all existing land to the call for the natural object, Cedar Island Lake, mentioned in the fictitious field notes and shown upon the plat, regardless of the other calls of course and distance. The theory of the bill is that the Government is, by the false representation of the fictitious survey and plat, estopped to deny that the lake is the boundary of its grant. The prayer of the bill is that the court by decree—

> * * * establish the boundaries of said lands and that your orators may be protected in the use and enjoyment of such lands so owned by them as aforesaid *extending to and including the shores of said Cedar Island Lake and to the center of said lake.*

This presents the question of the office and purpose of the survey and plat and the power of the surveyor under the law governing him to conclude the Government by his fraud or manifest mistake.

The law regulating surveys of public lands and the natural features of the ground negative complainants' contention, control the surveyor and the Land Department, and so limit the survey, plat, and grant here in question as to make the fictitious meander line a boundary.

(1) The manner of making surveys of public lands is specified by sections 2395, 2396, and 2397 of the United States Revised Statutes. Section 2395 provides for the survey of the public lands into townships of 6 miles square by lines according to the true meridian and others at right angles thereto. Except only where navigable rivers or reservations make this impracticable can the President change this method. The township is to be subdivided into 36 sections of 1 mile square by lines parallel to the township boundaries, each of these lines to be plainly marked upon trees, and the section corner at the end of every mile to be numbered and marked on a tree near thereto with the section and township number. The surveyor must note in his field book the true situation of all "mines, salt licks, salt springs, mill seats," and "water courses," and quality of the lands. This book is returned to the surveyor-general, who from it makes and transmits a plat to the officers who superintend the sales, "describing the subdivisions thereof, and the marks at the corners."

Sections 2396 and 2397 then provide:

> SEC. 2396. The boundaries and contents of the several sections, half sections, and quarter sections of the public lands shall be ascertained in conformity with the following principles:

First. All the corners marked in the surveys returned by the surveyor-general shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners, which stand on the same line.

Second. The boundary lines actually run and marked in the surveys returned by the surveyor-general shall be established as the proper boundary lines of the sections or subdivisions for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.

Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered

as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part.

SEC. 2397. In every case of the division of a quarter section the line for the division thereof shall run north and south, and the corners and contents of half quarter sections which may thereafter be sold shall be ascertained in the manner and on the principles directed and prescribed by the section preceding, and fractional sections containing one hundred and sixty acres or upwards shall in like manner, as nearly as practicable, be subdivided into half quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Interior, and in every case of a division of a half quarter section the line for the division thereof shall run east and west, and the corners and contents of quarter quarter sections, which may thereafter be sold, shall be ascertained as nearly as may be in the manner and on the principles directed and prescribed by the section preceding; and fractional sections containing fewer or more than one hundred and sixty acres shall in like manner, as nearly as may be practicable, be subdivided into quarter quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Interior.

The minute and careful provisions of this statute show an intention to fix uniform and definite rules by which the form and boundaries of tracts of land should be made certain. No reference is made to natural monuments, nor are they recognized as having any force. The act requires artificial monuments to be

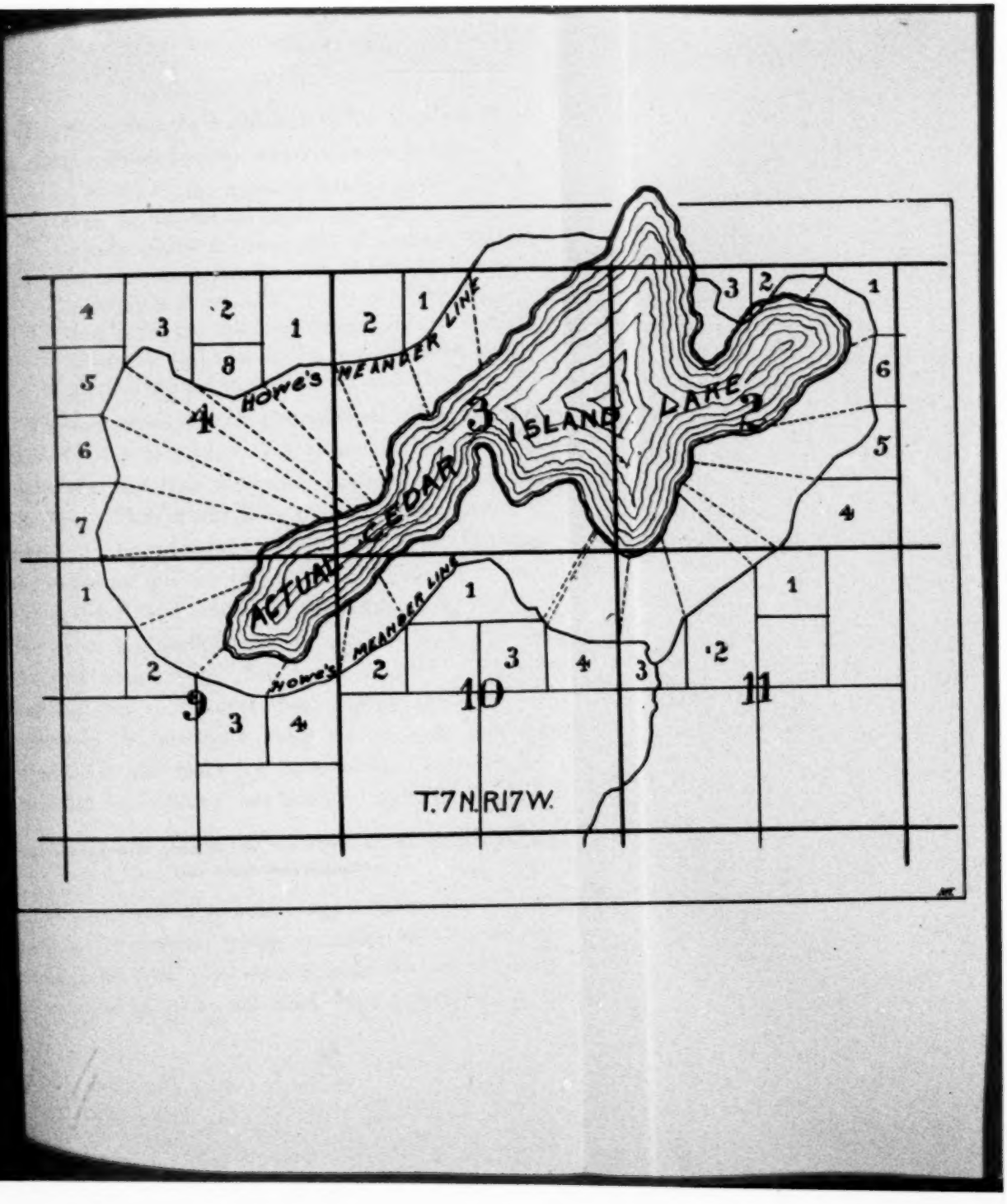
made by the surveyor at uniform distances, on courses of fixed direction, for the very purpose of uniformity, fixing and controlling tract boundaries. Officers who dispose of and persons who enter public lands are conclusively presumed to act with knowledge of the law. The only intent that the purchaser can be heard to assert is that he expected to receive that tract which has been or will be ascertained to be his upon a survey in compliance with this statute. The law is a part of the contract. There is no room under this system for rules of construction to ascertain the intent of the parties, as might arise upon sales under an irregular system of surveys, having no fixed general courses and distances.

It is demonstrable that the lots in the case at bar can not be extended to the lake by straight lines. If the lines of lots 3, 5, and 6 be extended by straight lines they would never reach the lake, and by such extension the lots would overlap each other. The lines of lot 1, the east line of lot 8, and south line of lot 7 extended would reach the lake, but the west line of 8 and north line of 7 would not. To satisfy appellees' contention, the prayer of the bill, and the decree of the court, the lines must be deflected and extended radially to the lake, the west line of lot 3 being deflected, approximately, forty-five degrees from its course, and other lines proportionately, as illustrated below.

It must be noted that there is no statutory requirement for the recognition of streams or bodies of water as controlling calls of the survey, but, on the contrary,

boundary lines not actually run and marked shall be ascertained by "straight lines" run from "established corners" east and west and north and south. The meanders and calls for bodies of water, streams, or other natural monuments not marked as corners can not be held to be controlling calls, superseding both course and distance, if, as in this case, they overturn the primary object of the statute—a rectangular division of lands by lines run to the cardinal points from the true meridian. The prayer of the bill and decree rendered produce in section 4 a result subversive of the cardinal and controlling system fixed by statute, which result is illustrated by the drawing here inserted.

In the face of the statute it can not be rationally presumed that the Government intended to convey, or that the patentees of lots 1, 8, 3, 5, 6, 7 expected to receive, or supposed that they were making entry for any such absurdly formed bodies of land as result by extending the lines of these fractional lots radially to the lake; or that fractional lot 1 in the northeast of section 4, and lots in the north half of section 10, should extend into section 3, and lots 4 and 5 in section 2, and those in the north part of section 11 should be extended to the lake across the southwest quarter of section 2, as would be necessary for them to border upon the lake. Had Howe made and returned such a survey, it must have been disapproved. Because he did not make it, and returned a fictitious one, the court is asked to give his failure to act the effect of a survey that must necessarily have been immediately disapproved by the land department, had it been so made and returned.


HOWE'S MEANDER LINE
ISLAND LAKE
CEDAR
ACTUAL
HOWE'S MEANDER LINE
T.7N.R17W.

The circumstances in the case at bar are like those in *Horne* v. *Smith* (*supra*), wherein the court said:

> * * * the meander line, as shown on the plat, is, so far as these lots are concerned, wholly within the east half of sections 23 and 26, while the water line * * * is * * * in sections 22 and 27 * * * The description in the patents is of certain lots in sections 23 and 26, and, manifestly, that was not intended to include land in sections 22 and 27.

The contention here, in like manner, is that the east line of lot 1 in section 4 shall be extended southeasterly to the lake to include lands in section 3 and the lines of lots 2 and 3 in the southwest quarter of section 11 be extended to the lake, including lands in the southwest quarter of section 2, which is contrary to the above clear holding of the court. The requirement that the surveyor "shall note in his field book the true situation of" "all water courses" does not indicate that the Government intended thereby to supersede the statutory rules for ascertainment of boundaries and make the fictitious field notes conclusive that the fractional lots bounded upon the lake.

Surveyor's acts outside or violative of his authority do not bind Government.

The surveyor is a public agent whose powers are defined by statute, which is notice to all claiming through his acts. His acts, outside his authority and in violation of it, do not bind the Government. As

said in *Whiteside et al.* v. *United States* (93 U. S., 247, 257):

> Although a private agent, acting in violation of specific instructions, yet within the scope of his general authority, may bind his principal, the rule as to the effect of the like act of a public agent is otherwise, for the reason that it is better that an individual should occasionally suffer from the mistakes of public officers or agents than to adopt a rule which, through improper combinations or collusion, might be turned to the detriment and injury of the public. (*Mayor* v. *Eschback*, 17 Md., 282.)
>
> Individuals as well as courts must take notice of the extent of authority conferred by law upon a person acting in an official capacity, and the rule applies in such a case that ignorance of the law furnishes no excuse for any mistake or wrongful act.

As to officers of the land department, it was held in *Moffat* v. *United States* (112 U. S., 24, 31) that:

> * * * The Government does not guarantee the integrity of its officers nor the validity of their acts. It prescribes rules for them, requires an oath for the faithful discharge of their duties, and exacts from them a bond with stringent conditions. It also provides penalties for their misconduct or fraud, but there its responsibility ends. They are but the servants of the law, and if they depart from its requirements the Government is not bound. * * *

No estoppel here. Courts can not make or correct surveys of public lands.

The court, under the guise of an estoppel, is here asked to decree and establish a survey violative of an express statute. When stripped to the red, the proposition becomes an absurdity. There is no such magic in an estoppel as to authorize a court to decree the violation of a statute. The courts have no jurisdiction to decree the correction of a survey. (*Cragin* v. *Powell*, 128 U. S., 691, 697.) Much less can they by decree give effect to a survey never made, and which, if made, would be violative of express statute law.

An estoppel can be no broader that the representation upon which it arises. The effect of an estoppel is to prevent the party from showing the truth. An estoppel must be mutual, certain as to every intent, and can not be extended by mere argument or inference. Except as it has granted lands to *bona fide* purchasers according to the plat made from the fictitious survey, the Government is not bound by the plat or representation of a survey. As to the parts of the township outside the representation of lines of survey, the Government is not bound.

Outside those lines, regarded as "established" lines, there is no representation that a survey was made. Those lines represent that the survey terminated there, and that whatever lay outside those fictitious lines of meander was unsurveyed. There was no representation that the land lying outside the meander, between it and the lake, was part of the fractional lots, but that it was not a part of the lots and was not sold and did

not pass by the patent. The lake not lying there, the representation of a meander became the boundary line of the lots.

In *Brown's Lessee* v. *Clements* (3 How., 650) the court held that, under the act of April 24, 1820 (codified as Revised Statutes, sections 2395–2397), it is the duty of the surveyor to so lay out a fractional section as that an entire quarter section may be had if the fraction admits of it, and that the local office has no authority to sell by a plat disregarding the requirement. Later, in *Gazzam* v. *Phillips* (20 How., 372), with reference to the same irregular survey, the court was constrained by a usage of twenty-eight years, and by regard to rights arising under it, to overrule that decision so far as it affected fractional sections, but no cases adjudged since the act of 1820, *supra*, have permitted the extension of fractional tracts into another section, beyond the extended lines of the fractional section, as results in the present case.

Where no meander was actually run, or where the meander does not approximately indicate the water line, the meander becomes a boundary.

The court has not been frequently required to determine the effect of the statute regulating surveys as bearing upon and controlling the general rule that calls for natural monuments, as bodies of water, control courses and distances, but in such cases as the court has made reference to the matter, the clear intimation has been that this rule must yield to the statute. In *Horne* v. *Smith* (159 U. S., 40), as before stated, a

meander was actually run along a bayou falsely indicated upon the field notes as "Indian River." It was claimed that the fractional lot must be extended to the river. The court held (pp. 43, 44):

> * * * In the first place, the area of the lots is given, and when that area is stated to be 170 acres, it is obvious that no survey was intended of over 700 acres. In the second place, the meander line, as shown on the plat, is, so far as these lots are concerned, wholly within the east half of sections 23 and 26, while the water line of the main body of the river is a mile or a mile and a quarter west thereof, in sections 22 and 27. Again, the distance from the east line of the section to the meander line is given, which is less than a quarter of a mile, while the distance from such east line to the main body of the river must be in the neighborhood of a mile and a half. Further, the description in the patent is of certain lots in sections 23 and 26, and, manifestly, that was not intended to include land in sections 22 and 27.
>
> * * * * *
>
> It is unnecessary to speculate why it was that it was not surveyed. It may have been a mere oversight, or it may have been because the surveyors thought that the action of the water would soon wash the low land away; but whatever the reason the fact is obvious that no survey was made of that body of land, and the boundary line fixed was the water line of the bayou [i. e., the meander line].

Again, in *Niles* v. *Cedar Point Club* (175 U. S., 300), the meander line was run through a marsh, so indicated by the field notes, but it was contended that the true boundary was the lake. The court discussed the statutes (p. 306) and held:

> It may be that Surveyor Rice erred in not extending his surveys into this marsh, but his error does not enlarge the title conveyed by the patents to the surveyed fractional sections. The United States sold only the fractional sections, received only pay therefor, an amount fixed by the number of acres conveyed, and one receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of the surveyor more land was bought than was paid for, or than the Government was offering for sale.
>
> It may be true that under his contract, the requirements of the statute, and the regulations of the Land Department, Rice should have extended his surveys to the shores of Lake Erie, but he did not do it; he stopped at the borders of this marsh, and the Land Department in effect approved his action. He evidently thought that the marsh was to be treated as a body of water, a conclusion not unwarranted in view of the finding of excessive high water at that time, but a conclusion which other findings show was not correct. And it may be remarked in passing that the letter of the statute would not limit the surveys to the shores of the lake, for section 2395 Revised Statutes declares that surveys shall be by running lines at

right angles "so as to form townships of 6 miles square, unless where the line of an Indian reservation or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require."

* * * It is true section 2396, which provides how the boundaries and contents of the several sections, half sections, and quarter sections of the public lands of the United States shall be ascertained, says, after stating the rule where all the corners are established, that "in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township."

If this recognizes any other external boundary than that which is indicated in section 2395, it does not prescribe what that external boundary shall be; and if the land department treats either a marsh or a lake as such external boundary, who can declare that its action is void?

* * * * *

(p. 308) But it is urged that the fact that a meandered line was run amounts to a determination by the land department that the surveyed fractional sections bordered upon a body of water, navigable or nonnavigable, and that

> therefore the purchaser of these fractional sections was entitled to riparian rights; and this in face of the express declaration of the field notes and plat, that that which was lying beyond the surveyed sections was "flag marsh," or "impassable marsh and water." But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forest or prairie, land or water, Government or Indian reservation.

The court had previously intimated the effect of a mistaken or fraudulent meander line, and in *Mitchell* v. *Smale* (140 U. S., 406, 413) said:

> We do not mean to say that in running a pretended meander line the surveyor may not make a plain and obvious mistake or be guilty of a palpable fraud; in which case the Government would have the right to recall the survey and have it corrected by the courts or in some other way. Cases have happened in which by mistake the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government.

The recent expression of the court in *French-Glenn Live Stock Company* v. *Springer* (185 U. S., 47) was upon a case in many respects like the present in that the meander line was far distant from the actual body of water and the fractional lots could only reach the actual water line by deflected radial extension of their

side lines. It was different from the present case in that a meander line was actually run, and the field notes described it as passing through a "tule marsh." The court held (pp. 51–52):

> * * * We agree with the supreme court of Oregon in thinking that the question whether the northern boundary of the lots of the plaintiff in error was an existing lake, the recession of whose waters would leave the bed of the lake thus laid bare to accrue to the owner of the lots, was a question of fact which was not concluded by a mere call for a meander line. If, indeed, there had been a lake in front of these lots at the time of the survey, which lake had subsequently receded from the platted meander line, the claim of the owner of the lots to the increment thus occasioned might be conceded to be good if such were the law of the State in which the lands were situated. But if there never was such a lake—*no water forming an actual and visible boundary—on the north end of the lots*, it would seem unreasonable either to prolong the side lines of the survey indefinitely until a lake should be found, or to change the situs of the lots laterally in order to adapt it to a neighboring lake. * * *

The cases of *Horne* v. *Smith* and *French-Glenn Live Stock Co.* v. *Springer*, above cited, were decided upon facts so nearly parallel to those in that at bar that those decisions seem conclusive here. The defense in the present case, presented by appellants, is the stronger, and differs from those mentioned as parallel and controling, in that, in the present case, no meander line

was in fact run, no survey was in fact made, and no body of water in fact existed at or near the line falsely indicated, as was the fact in *Horne* v. *Smith*.

The foregoing cited cases might well be relied upon as showing that a false meander line, whether run or not, will not operate to extend the boundaries of fractional tracts indefinitely to reach the natural object called for. But expressions of this and other courts in instances not presenting the great departure from the statutory rule for surveys that is here contended for by the appellees, used in cases where the meander was actually run in good faith, give such semblance of foundation for that contention that the decision of inferior Federal and State courts will also be considered.

The general rule of this and of other courts is that where a meander line is in fact run approximately along the water boundary, though excluding points of land, the water and not the meander line is the true boundary. But this rule does not apply where no meander was made or where the meander does not approximately indicate the water line.

In *Granger* v. *Swart* (1 Woolw., 88, 90) Justice Miller, in his charge to the jury, laid down the rule that:

> The patents and deeds under which the defendant claims do not pass the title to the premises in question, unless, at the date of the entries on which they issued, the Rock River, where it is called a river, and Lake Koshkonong, where it is called a lake, extended to and bordered upon the meandered line which constitutes the boundary of the lands described in the

patents. In other words, if, between the meandered line, which by the Government survey was made one of the boundaries of the land sold to Walker, and the bank of Rock River and shore of Lake Koshkonong, there was at that time a body of swamp, or waste land, or flats, on which timber and grass grew, and horses and cattle could feed, and hay be cut, then the patents to Walker did not cover this land, but were confined to the actual limit of said meandered line.

In *Lammers* v. *Nissen* (4 Nebr., 245–251), affirmed by this court (154 U. S., 650), the Nebraska court held that:

> The mere fact that it [a line] is run and designated upon the plats as a meander line certainly *can not be conclusive* in the matter. To establish the doctrine that such meander line is conclusive would be to estop the Government from disposing of land left unsurveyed between such line and the bank of the stream; it would prevent the correction of mistakes made by surveyors in such case and would be in direct conflict with the well-settled rule of law defining what is an accretion to land.

This decision is by that court cited and adhered to in its later decisions in *Bissel* v. *Fletcher* (19 Nebraska, 725, 727; 28 N. W., 303), and *Harrison* v. *Stipes* (34 Nebraska, 431, 433; 51 N. W., 976), and the decision is cited by this court in *Horne* v. *Smith* (*supra*)

In *James* v. *Howell* (41 O. St., 696, 709) the court held the same doctrine. This decision was cited by this court in *Niles* v. *Cedar Point Club* (175 U. S., 306).

Glenn v. *Jeffrey* (75 Ia., 20) arose upon a case similar to *Horne* v. *Smith* (*supra*), the field notes of survey calling for the Missouri River, but in fact reaching only to a bayou some distance short of the river. The court (p. 21) held:

> There was no controversy as to the facts. It is true that the Government plat and field notes described the meander line as being at the Missouri River, and therefore it is claimed that lot 3 extended to the river. In fact, however, instead of running the meander line along the river it was run along a bayou some distance from the river. The land in question can not be regarded as accretion, but existed, as it now does, when the survey was made. The court rightly directed the jury to find for the defendant. *The land never was in fact surveyed* by the Government, and never sold or conveyed to the plaintiff.

Later that court had before it a case substantially identical with this and the French-Glenn case, *supra*. It was a case of false meander. There was no water body at or near to the place indicated in the field notes of survey. The plaintiff being owner of land bounding the false meander line, brought action to quiet title against one occupying the tract in question, claiming as a homestead settler, and that the tract was unsurveyed public land. Of the plaintiff's claim of ownership the court, in *Grant* v. *Hemphill* (92 Ia., 218, 223), held:

> It is a claim of ownership because he is the owner of the adjoining land. If his ownership

on this ground is well founded he is entitled to a decree quieting his title; if he has no title to the land he has no more right to the possession than the defendants. In other words, if the land in dispute is not owned by the plaintiff, and is not surveyed, and can not be sold or disposed of until it is surveyed, it is part of the public domain, to which no one can acquire either ownership or right of possession. * * *

We come now to the material question in the case. A section of land is supposed to contain 640 acres. If section 19 had been all surveyed, it would have embraced a less number of acres, being what is known as fractional. As we have said, the five lots owned by the plaintiff contain 221.36 acres, and the west half of the northwest quarter is marked on the plat of the Government survey as containing 58.93 acres. If the section were not fractional, the plaintiff's claim would be a demand for a decree quieting title in him to more than 360 acres of land based on the ground that he is the owner of 222 acres of land adjoining, of which he is a riparian proprietor, and he makes this demand in a court of equity. A riparian proprietor is one who owns land bounded upon a water course or lake. The evidence in this case shows that there was not at the time of the Government survey, and is not now, any body of water east of the meandered line on which to found any valid claim of land outside of the line, by accretion or reliction, or in any other manner. In the large mass of authority collected and cited by counsel we find no case which can be said to sustain a claim made upon

> any such a state of facts. It is well understood that a meandered line is not regarded as a line of boundary. It is supposed to be along the shore of a body of water and to follow the windings of the stream or lake and the sinuosities of the banks. In such case, and where it appears that the Government intended to sell all the land to the river or body of water, the riparian owner is entitled to all the land adjacent to his grant to the water's edge. (*Kraut* v. *Crawford*, 18 Ia., 549.) *But no such condition is found under the evidence in the case at bar. There is not, and has not been, any body of water upon which to locate a meandered line.*

The court then quoted the rule in the Schurmeier case that a meandered line along a body of water is not a boundary, and continued (p. 225):

> We have cited this well-settled principle, not for the purpose of approving and following it—for it is known and understood everywhere to be the correct doctrine—but *to show that the meander line and the banks of a stream or shore of a lake can not be held to apply where there is no body of water to which it can be referred.* * * *
>
> We hold that all of the land in dispute is part of the unsurveyed domain of the United States, to which no one can obtain title, except through the regular Government methods adopted by the General Government for the disposition of the public lands. The decree of the district court is affirmed.

This defines clearly the position of the Iowa supreme court on the question, and is cited by that court as

authority in the later case of *Rood* v. *Wallace* (109 Ia., 5, 9).

In *Shoemaker* v. *Hatch* (13 Nev., 261) the question arose whether an island in the Truckee River passed by disposal by the United States of the riparian land bordering the south channel, which is permanent in character, though the smaller of the two channels. The court (p. 266) held:

> * * * A glance at the map shows to a demonstration that the intention of the surveyor was to meander the southern channel, and not to include the land north of it in the subdivisions purchased by Haydon. To allow the claim of respondents would give them only about 2 acres of the west end of the island as a part of a fractional subdivision containing 10 or 15 acres, but by the same rule the owner of the next fractional subdivision on the east, which contains not more than 5 or 6 acres, would take as parcel of his purchase about 8 acres of the island.
>
> * * * * *
>
> To determine whether a bar or island is part of the land on either side of a stream, account must be taken in every case of a variety of circumstances, such as the relative size and permanence of the channels, the size of the island compared with the size of the stream, and the conformity or divergence of course between the meander line and the main channel. It is a question of fact to be determined from all the surrounding circumstances, whether the land between the meander line and the shore of the

lake or water course is included in the survey. (See *Lammers* v. *Nissen*, 4 Neb., 251, and *Granger* v. *Swart*, 1 Woolworth's C. C. Rep., 90.) In this case we conclude from the facts proved and found by the court that the island in question was not included in the land surveyed on the south side of the south channel.

In *Fuller* v. *Shedd* (161 Ill., 462, 482), the court recognized the principle, though finding it not applicable to the case. It held:

> * * * If there is such mistake by the omission of lands in a survey between the meander line and the water, that the proportion to that sold is great, it may be corrected by a resurvey.
>
> * * * * *
>
> (P. 476.) There are cases where the meander line would be of itself the boundary, as where the line run by the Government surveyors by mistake or fraud in surveying the public lands leaves between such line and the stream or lake a considerable body of land on which is vegetation, etc., above the ordinary stage of water. In such case the surveyed land is all that is granted by the United States, and the patentee is not a riparian proprietor, his boundary being fixed by the meander line.

In *Barnhart* v. *Ehrhart* (33 Ore., 274; 54 Pac., 195), the question arose whether the meander line as run was, as plaintiff contended, along Wild Horse Creek, boundary of an Indian reservation, or was along a dry creek bed leaving about 152 acres unsurveyed public

land. Defendant asked the court to instruct the jury (p. 279) that if—

> * * * there existed at the time of the Government survey and plat of the meander line of the reservation a quantity of upland between the meander line and the channel of Wild Horse Creek covered with a natural growth of vegetation, and such tract of land was equal to or greater in area than the adjacent lots lying north of the meander line and claimed by plaintiff, then you may consider this fact as a circumstance tending to show that the meander line was intended as the south boundary of the lots claimed by plaintiff, regardless of the location of the creek. I instruct you that a meander line is a line run by the surveyor for the purpose of determining the sinuosity of the stream and the area of the lots; and where such line in fact meanders the stream, under the laws of this State, the boundary of the lots described would be the center of the channel of the stream, and not the meander line as run on the shore. If, however, you find from the evidence in this case that there is a wide and material divergence between the meander line as run by the surveyor and the north bank of the stream, as it existed at the time of the survey, then I instruct you, as a matter of law, that the meander line as run by the surveyor upon the ground, and not the stream, should be taken as the southern boundary of the lots described in plaintiff's complaint.

The court refused the request, and the supreme court, reversing the case (33 Oreg., 280), held:

> When *for any reason* the surveyor omits to include large tracts of land lying between the meander line as surveyed, or as pretended to have been run upon the ground, and such streams or bodies of water, the patents for the lots, *though referring to the official plat of such survey for identification*, are not equivalent to a conveyance of the premises to such navigable stream, lake, or bay, but are grants limited by such meander line [citing authorities]. Tested by this exception to the general rule applicable to the survey of public land, we think defendant was entitled to an instruction illustrative of his theory of the case; and this being so, inasmuch as the court did not embrace the subject in its general charge, it erred in refusing to give the first instruction requested.

The same principle is recognized and approved by the supreme court of North Dakota in *Heald* v. *Yumisko* (7 N. Dak., 422; 75 N. W., 806). The court (7 N. Dak., 426) said:

> Each case announces the principle that "in the surveys of the public lands of the United States the meander lines are generally considered as following the windings of streams; but the question whether they do so or not is a question of fact, to be determined by evidence *aliunde*." And in each case it was held that where the meander line did not in fact follow the shore line the fact that it was designated on the map as a meander line was not conclusive on the Government, and did not estop it from

> claiming the land between such pretended meander line and the shore line. We think those cases were correctly decided under their facts. * * *

In *Martin* v. *Carlin* (19 Wis., 454), the patentee of a fractional lot was held to an erroneous meander line as a boundary. The facts were, and the decision of the court was, that:

> (P. 454) It appears that there is a mistake in the original survey and meandering of Rock River, and that it is farther north and west than the Government survey had located it on the northeast fractional quarter, so that there is more land in the fractional quarter than the Government survey calls for. * * *
>
> (P. 458) Where the lines of a survey can be run from well ascertained and established monuments, they are to control and govern a description delineated on a plat. To adopt any other rule would annul the authority of the public surveys and open the door to litigation and difficulty.

The substance and general trend of the foregoing decisions upon cases arising under the system of Government surveys is that where a meander line along a stream or lake does not approximately follow the shore, or if no such body of water exists there, in such cases the meander line becomes a boundary.

This is the application to the system of Government surveys of an old and universal doctrine relating to surveys and conveyances, viz:

Monuments prevail over courses and distances, but

if a monument be false or irreconcilable, it is rejected, and the courses and distances control as boundaries to limit the tract conveyed or sold.

THE WISCONSIN RULE.

A modified and somewhat different, and indeed exceptional, rule has been adopted in Wisconsin. There the rule is that where the stream or lake does not exist at the point indicated, the lines will be extended until the water is reached, *or the fractional lot is full and regular*, but no farther.

The reasoning upon which this conclusion is reached is that the subdivisional lines of a section are statutory lines, and therefore have equal potency with the township and section lines. This consideration led that court, in *Whitney* v. *Detroit Lumber Company* (78 Wis., 240), to hold that if the indicated water boundary is not found within the lines of a fractional 40-acre subdivision, the tract can not be extended beyond its lines. This is followed in *Lally* v. *Rossman* (82 Wis., 147), and *Underwood* v. *Smith* (109 Wis., 334).

THE MINNESOTA RULE. SUPREME COURT OF THAT STATE APPLIES IT TO THIS CONTROVERSY.

In *Lamprey* v. *Mead* (14 Minn., 290) and *Olson* v. *Thorndike* (76 Id., 399), the supreme court of Minnesota referred to the Wisconsin case of *Whitney* v. *Detroit Lumber Company* (*supra*), and spoke of the rule there announced as a proper one under the facts of that case, but held it not applicable to the cases then under consideration.

Later, July 11, 1902, in *Security Land and Exploration Company* v. *Burns et al.*, and *same* v. *Weckey et al.* (91 N. W. Rep., 304, now pending on writ of error in this court, Nos. 431 and 432), the Minnesota court had before it actions of ejectment, at the suit of the Security Land and Improvement Company, against Burns and Weckey, to recover possession of what were claimed to be parts of lots 3, 5, 6, and 7, in section 4, township 157 north, range 17 west. The Security Land and Exploration Company held the patent title to said fractional lots under the Howe survey. The defendants, Burns and Weckey, were in possession of the lands lying between the meander line of said lots and the shore of Cedar Island Lake, claiming as settlers under the homestead laws. By reference to the maps (record, pp. 15, 22, and 71), it will be seen *the land there in controversy adjoined the west side of what is here claimed by appellees to be part of lot 8, in the same section 4.* The controlling questions involved were, therefore, identical with those in this case, and arose upon the same survey and involved lands in the same section 4 lying between the meander and lake lines. The Minnesota court made reference to its former decisions and those of this court following the rule in *Railroad Company* v. *Schurmeier* (7 Wall., 272), and held (91 N. W. Rep., 304, 306):

> * * * in those cases, as well as in the cases in this court to which we have referred, there was in fact a stream or lake to be meandered, and the shore line of the body of water and the meander line substantially coincided

except where tongues or points of land extended out into the body of water beyond the meander line, or the waters had receded; and the question was one of riparian rights strictly. No such questions are involved in this case, for the question here is as to the boundaries of the fractional lots owned by the plaintiffs. If in this case there was in fact, or ever had been, a lake upon which any part of the several fractional lots abutted, the general rule would apply, and their boundary would be the lake. But such is not this case, for there was in fact no lake at or within any reasonable distance of the meandered line or any part thereof, and never had been, to which the meander line might be found referable. * * * And, further, that, if the so-called meander line be accepted as a boundary line, it will give to the patentees or their grantees the full quantity of land bought and paid for by them, but, if they are permitted to extend their lot lines through the adjacent forest to the lake, they will obtain more than three times as much land as they purchased and paid for. In short, this is not a case where the surveyor, in running a meander line, has made a fair and honest attempt to follow the sinuosities of the shore line of an actual body of water, and by exclusion or inclusion of irregularities of contour has produced an average and approximately correct result, but one where the existence, at any time, of a lake upon which any part of the fractional lots in question could abut, is a pure fiction. Such being the case, it is not within the general rule as to meander

lines; for the far-away lake is an impossible boundary for all of the lots in question, and could never have been intended by the Government and the patentees as the boundary of the lots. The official plat was only intended to be a picture of the actual conditions on the ground; but the fraudulent mistake in the plat in this case was so gross that no man actually viewing the premises could possibly be misled, or believe that the shore line of the lake was intended as the boundary line of the lots. He would understand at once that the meander line as traced on the plat was the actual boundary line of the lots. This case, then, is one where the call for the natural monument, the lake, must be disregarded; for the admitted facts show that it is an impossible call, and that, if it is rejected, the courses and distances and the meander line will exactly close, and give to the plaintiff the precise quantity of land bought from the Government and paid for. It falls within the rule that a meander line is not, as a general proposition, a boundary line; yet the boundaries of fractional lots will not be indefinitely extended where they appear by the Government plat to abut on a body of water which in fact has never existed at substantially the place indicated on the plat. In such exceptional cases, the supposed meander line will, if consistent with the other calls and distances indicated on the plat, mark the limits of the survey, and be held to be the boundary line of the land it delimits. (*Horne* v. *Smith*, 159 U. S., 40; 15 Sup. Ct., 988; 40 L. Ed., 68; *Niles* v. *Cedar Point*

Club, 175 U. S., 300; 20 Sup. Ct., 124; 44 L. Ed., 171; *Fuller* v. *Shedd*, 161 Ill., 462; 44 N. E., 286; 33 L. R. A., 146; 52 Am. St. Rep., 380; *Whitney* v. *Lumber Co.*, 78 Wis., 240; 47 N. W., 425; *Grant* v. *Hemphill*, 92 Iowa, 218; 59 N. W., 263; 60 N. W., 618; *Live Stock Co.* v. *Springer*, 35 Or., 312; 58 Pac., 102.)

> The last case cited was affirmed by the Supreme Court of the United States, and its decision in that case seems to conclusively establish the rule we have stated. * * * Our conclusion is that the trial court in this case was correct in holding that the boundary line of the plaintiff's lots was the line appearing on the Government plat as a meander line.

This clearly places the supreme court of Minnesota in harmony with the decisions of this court in Horne v. Smith and French-Glenn Live Stock Company, supra.

Even where the Federal statutes governing surveys do not apply, courts generally reject the call for natural monuments where the stream or lake does not exist in reasonable proximity to its designated place.

Courts seek to ascertain and effectuate the intention of the parties. If it appears that the call for a natural monument is a false or random one, the court rejects it. Hutchinson, Land Titles, section 529, lays down the rule that:

> Monuments are facts visibly indicating the extent of the land and the direction of the boundary lines. The courses or distances laid down in the deed or plat are merely descriptive of the facts. They are necessarily based upon

measurement, estimation, and calculation. Their accuracy depends upon the skill of the surveyor, and they may not be in accord with subsequent surveys. The monuments, however, actually found or placed upon the ground are always, as long as they exist, in the same direction and at the same distance from each other.

* * * * *

The controlling influence of a monument, natural or artificial, arises upon the supposition that it is more certain than course and distance. But, if in a given case it should prove less certain, the rule would fail, with the reason for it. Where the manifest intention of the parties requires the rejection of a call for one or more monuments in order to uphold the deed, the intent must prevail.

In *White et al.* v. *Luning* (93 U. S., 514, 524), the court held—

* * * It is true that, as a general rule, monuments, natural or artificial, referred to in a deed control on its construction rather than courses and distances; but this rule is not inflexible. It yields whenever, taking all the particulars of the deed together, it would be absurd to apply it. For instance, if the rejection of a call for a monument would reconcile other parts of the description, and leave enough to identify and render certain the land which the sheriff intended to convey, it would certainly be absurd to retain the false call, and thus defeat the conveyance.

In *King* v. *Watkins* (98 Fed., 913, 924), the court held that—

> The rule that monuments prevail over course and distance does not apply to mistaken or false calls, as in a case like this, where the evidence conclusively shows that the surveyor was mistaken or ignorant of the location of the monuments called for, and of the local geography of the mountainous territory in which he was locating the survey. *Cattle Co.* v. *Thomson* (83 Tex., 169; 17 S. W., 920) is a case that received the approval of the court of appeals of Virginia in *Clarkston* v. *Iron Co.* (93 Va., 258; 24 S. E., 937). In that case the court said:
>
> "There are but two controlling questions in this case: (1) Whether the call for Devils River, made in the original surveys of Keuchler, should be extended so as to cross the river, or should yield to course and distance. (2) * * * Keuchler intended to place the surveys on Devils River, but in his attempt to do so he evidently mistook the true course of the river, and was misled by a dry canyon and the general course of the river as he found it when he established the southwestern corner of survey No. 26, in Block C of the surveys, and the northeast corner of No. 84, in Block I. It is true that the remaining surveys were not run upon the ground, but were platted in upon the map. They were platted in, however, from initial points fixed and clearly defined upon the ground. Keuchler may have intended to appropriate the land up to and across the river, but, as he did not know where the river actually was, no ran-

dom call therefor will control course and distance, when there is a clearly-defined starting point. It would be utterly at variance with all rules upon the subject to so hold. These surveys must be run out as platted in accordance with the field notes, the call for Devils River yielding to the calls for course and distance."

The calls for monuments relied on by defendants in the case at bar are clearly random calls, and the rule which holds that monuments must prevail over course and distance does not apply to such calls. To hold differently would give the rule an extension that has not received the sanction of any court, and that can not be sustained by the reasons given for its adoption.

In *Higginbotham* v. *Stoddard* (72 N. Y., 94, 99) the court held:

When there is anything in the description which shows that the courses and distances are right in themselves, they will prevail, because the primary object in all cases is to carry out the intention of the parties, as when it is apparent from the face of the deed that the intention was to convey a specific quantity of land, if the courses and distances would include such quantity, and the description by monuments, more or less, the former should be followed.

In *Buffalo, etc., R. R.* v. *Stiegler* (61 N. Y., 350, 351) the court held that:

When it appears from the designation of quantity, or other elements of description, that the courses and distances from a fixed and de-

> termined line were intended to control monuments, then the latter should be disregarded. The intention of the parties, as evidenced by the deed, is, in all cases, to determine the location of the premises granted by it.

In *Davis* v. *Rainsford* (17 Mass., 207, 210), the court held:

> The only reason given, or which can be given, why monuments are to control the courses and distances in a deed is that the former are less liable to mistake.

In *French-Glenn Live Stock Co.* v. *Springer* (35 Oreg., 312, 321), affirmed in this court, *supra*, the State court held:

> If there never was a lake in front of plaintiff's lots, or if one did not exist there at the time of the survey, then there was no natural object or monument marking the north boundary of said lots; hence resort must be had to the secondary evidence, viz, the courses and distances which are ascertainable from the plats and surveys, and they must prevail. The result is natural, and the land conveyed would be just what a mathematical calculation would produce from the field notes of the survey of the fractional sections and the supposed meander line. * * * [p. 323.] If there was no lake to meander, the purchaser could not have bought upon the representation of the Government that there was.

In *Brookman* v. *Kurzman* (94 N. Y., 272, 276) it was held that the rule that a monument controls courses

and distances is not inflexible, but that the truth must be ascertained from all the facts. To the same effect are *Hostetter* v. *Ry. Co.* (108 Cal., 38), *Heaton* v. *Hodges* (14 Me., 66), *Murdock* v. *Chapman* (9 Gray, Mass., 156), *Johnson* v. *Simpson* (36 N. H., 91, 94), *Parkinson* v. *McQuaid* (54 Wis., 473, 478), *McCormick* v. *Huse* (78 Ill., 363, 373–374), *Mastin* v. *Olcott* (101 N. Y., 152, 158), *Johnson* v. *Archibald* (78 Tex., 96). Authorities on this head might be indefinitely multiplied, but these suffice to show the settled rule that the primary object of all courts in all cases is to effectuate the intent of the contracting parties. The courts differ only in the application of the rule.

Facts conclusively charge appellees with notice that meander was boundary.

If appellees or their grantors, the patentees, supposed from the plat that the lake bounded their lots, they had no authority to assume or believe that they would find it elsewhere than where thereby indicated. When they did not find it at the designated place, on their admitted examination of the ground, they thereby had notice that the plat had given them a false monument, and were thereby relegated to the other descriptions of the survey for location of the boundary. If the remaining descriptions would accurately describe the tracts purported to be sold and patented, all ambiguity would disappear, the location, boundary, and extent of the tracts be definitely fixed, and the true intent of the parties clearly appear. An actual view of the premises by the parties is presumed in all grants

(*Buffalo, &c., R. R. Co.* v. *Stiegler, supra*), and this is sometimes stated as a reason why monuments usually control course and distance. But appellees expressly admit their agents actually viewed the premises before their purchase, and the evidence shows those agents discovered that no surveyors' marks appeared, and that the lake was not near where the plat indicated; that is, that there was mistake or fraud in the survey.

Statutes governing public surveys must be considered in determining intent of public-land transactions.

In ascertaining the intent of the parties in entries of public lands the statute governing surveys of public lands is a part of the facts upon which the entries were made, and must be considered. That no survey was made is here another and an ascertained fact. Upon such facts no intent could have existed to sell or convey tracts so irregularly formed, in violation of the statute, as to border on the lake.

Area or quantity bears strongly upon intent.

Another fact indicative of intent is quantity, as by law the price to be paid is measured, and in homestead cases the amount that can be entered is limited, by area.

In the present case the area of the lots bounded by the meander line, and their area if extended to the lake, severally, is approximately as follows:

	Returned.		Extended.
Sec. 3, lot 1	25.40		100
2	49.38		160
Sec. 4, lot 1	56.00		
2	40.30		
3	50.87		
5	34.75	267.57	600
6	30.50		
7	25.25		
8	29.90		
Sec. 9, lot 1	39.90		110
2	25.75		120
3	45.00		69
4	43.45		65
Sec. 10, lot 1	42.50		100
2	25.50		80
3	31.31		130
	595.76		1,525

That the intent was to convey 1,525 acres upon a sale under a survey the calls of which indicate but 595 acres violates sound rules for construction of such contracts, where the sale is for quantity and the price is fixed wholly by area.

In *Horne* v. *Smith* (*supra*) this court (159 U. S., 43) said:

> In the first place, the area of the lots is given, and when that area is stated to be 170 acres it is obvious that no survey was *intended* of over 700 acres.

In *Grant* v. *Hemphill* (*supra*) the court (92 Ia., 224) said:

> If the section were not fractional, the plaintiff's claim would be a demand for a decree

> quieting title in him to more than 360 acres of land, based on the ground that he is the owner of 222 acres of land adjoining of which he is a riparian proprietor, and he makes this demand in a court of equity.

In *Bissell* v. *Fletcher* (*supra*) the court (19 Neb., 727) said:

> The contention of the plaintiff is that lot 3 extends to the river, and notwithstanding the fact that lot 3 contains all the land the plaintiff purchased and paid for, and the effect of the extension of the line would be to give him about 117 acres of land to which he seemed to have no equitable right, still he declares the land to be his.

In *Niles* v. *Cedar Point Club* (*supra*) the court (175 U. S., 306) said:

> The United States sold only the fractional sections, received only pay therefor, an amount fixed by the number of acres conveyed, and one receiving a patent will not ordinarily be heard to insist that by reason of an error on the part of a surveyor more land was bought than was paid for, or than the Government was offering for sale.

In *McCormick* v. *Huse* (78 Ill., 363), one Holmes had entered the E. ½ NW. ¼, sec. 29, the patent being for 62.55 acres "according to the official plat of the survey of said lands returned to the General Land Office by the surveyor-general." The lands bordered upon a meandered bayou of the Illinois River, which crossed its north line. The holder of title under Holmes's

entry brought ejectment for the land in the E. ½ NW. ¼, sec. 29, north of the bayou. The court (78 Ill., 373–4) held:

> *The area* sold to him is noted on the plat of the fractional tract called for by his patent. The northwest quarter of 29 being made fractional by a navigable water course, the lines run upon the plat, *and the contents calculated*, must, under the act of Congress we have cited, confine him to the south of the bayou—there is no just pretense of a right to extend his lines across the bayou. * * * By the plat, field notes, entry and purchase he is limited to 62.55 acres, and the plat shows that is the exact quantity south of the bayou.
>
> It is claimed that quantity is not a reliable description. This court, in *McClintock* v. *Rogers* (11 Ill., 279), said, in construing a patent from the United States which describes the land granted by the number of the township, section, and range, the court would look to the plat and field notes made and returned to the surveyor-general by the Government surveyors in order to locate the land. Quantity, although the least reliable and the last to be resorted to of all descriptions in a grant or deed, in determining the boundaries of the premises granted, may sometimes be considered in corroboration of other evidence. Now where the plat is shown, and the number of acres within certain lines and boundaries is clearly specified, can there be more convincing evidence that a quantity specified must be found *within those lines and boundaries?* We think not. The area may be more

> or less on a new survey, but by the act of Congress, the area noted on the plat is to be taken for all practical purposes as the true area.

So in *Hostetter* v. *Ry. Co.* (108 Cal., 38) force is given to the area of land sold as indicating the intent of the parties and to interpret the calls and description of the land sold.

In any doubtful case the courts give weight to the fact that to follow the calls of the survey results in a gross excess, and hold that such fact is evidence of a mistake in the survey and that such mistake negatives an intent that monuments alone should be conclusive of intent.

ERROR IN DECISIONS OF COURTS BELOW.

The decision of the courts below, it is respectfully submitted, was based upon a misconstruction of the decisions in *Railroad Company* v. *Schurmeier* (7 Wall., 272), *Hardin* v. *Jordan* (140 U. S., 371), *Mitchell* v. *Smale* (140 U. S., 406), *McIver's Lessee* v. *Walker* (9 Cranch, 173), *Newsom* v. *Pryor* (7 Wheat., 7), *Craigen* v. *Powell* (128 U. S., 691), and *Jefferis* v. *East Omaha Land Co.* (134 U. S., 180).

In all these cases there had been an actual survey. The meander line, where bodies of water were encountered, had been actually run in good faith, approximately along the shore. The intent in every of the cases was to close the survey to the river or lake. In the Schurmeier case the disputed tract was a small sandbar, covered at high water. In the Hardin case, decided by a divided court, it does not appear that

any considerable body of land was excluded by the meander line, which ran across a narrow tongue of land extending into the lake. There had been a lowering of the water after the survey. The lake was nonnavigable, and the case was regarded as dependent upon the principles of riparian right. The suit was, in part, to recover possession of land covered by the water, the bed of the lake. The court (140 U. S., 272) said: "The main question in the cause is whether the title of the riparian owner on such a lake extends to the center of the lake or stops at the water's edge." The questions were obviously different from those governing the present one, and the decisions were but a restatement of that in the Schurmeier case. The controlling question was not, as here, merely one of boundary.

Cragin v. *Powell* (*supra*) was of different character and is not here applicable. A survey had been made according to which certain high and cultivable lands along a bayou were sold by the Government, and other lands, swamp and overflowed and unfit for cultivation, had passed to the State as swamp lands and had been sold by the State. The swamp-land grantee, claiming mistake in the survey, brought suit for settlement of boundary, obtained another survey and a decree so changing the location of his swamp land as to take the high land which the Government had sold. The court decided it as a question of jurisdiction, and held (128 U. S., 697) that:

> Whether the official survey made by Connelly is erroneous, or should give way to the

> extent of its discrepancies to the survey reported by McLeran, is a question which was not within the province of the court below, nor is it the province of this court to consider and determine. The mistakes and abuses which have crept into the official surveys of the public domain form a fruitful theme of complaint in the political branches of the Government. The correction of these mistakes and abuses has not been delegated to the judiciary, except as provided by the act of June 14, 1860 (12 Stat., 33, c. 128), in relation to Mexican land claims, which was repealed in 1864 (13 Stat., 322, c. 194, sec. 8). * * *

The case of *McIver's Lessee* v. *Walker* (*supra*) and that of *Newsom* v. *Pryor* (7 Wheat., 7) arose upon grants by the State of North Carolina, made before the cession to the United States of the territory now the State of Tennessee. The grants and surveys were made long prior to the Federal act for regular surveys of public lands, and are unaffected by the rules thereby imposed. These cases unqualifiedly hold that a call for a natural object in the patent or plat therein referred to controls both course and distance. In Newsom's case the patent was for land "lying on both sides of the two main forks of Duck River." These words controlled the location of the land. There was no false call for a natural object or monument. McIver's case was similar, as the patent made reference to "the plat hereto annexed," which showed Crow Creek running through the land. The survey was not a United States statutory survey and the grants were not made under

the United States public land laws. The facts so distinguish these cases from the present one as to make the decisions not applicable as precedents controlling here.

The case of *Jefferis* v. *East Omaha Land Company* (134 U. S., 178), cited by appellees, was one involving riparian rights to accretion. The land was surveyed in 1851. There was an actual survey and meander of the river. Fractional lot 4 then contained 37.24 acres. October, 1853, Jefferis purchased the lot from the Government. It affirmatively appeared (p. 180) that:

> At the time of the entry the meander line of the left bank of the river was the same, or nearly the same, as shown by such field notes and plat.

There had been no appreciable accretion to the lot. Subsequently there formed, between 1853 and 1870, "so slowly that it could not be observed in its progress," an additional forty acres of land. In 1856 Jefferis conveyed the tract by its surveyed description, and this title by mesne conveyances came to the East Omaha Land Company. In 1888 Counzeman, without any entry from the Government or grant by any one, entered upon and occupied the accretion land, and afterwards by quitclaim deed conveyed it to Jefferis. The land company brought suit to quiet its title. The court held that the accretion belonged to lot 4, upon which it formed as a part thereof, and title thereto passed by the several mesne conveyances to the East Omaha Land Company and quieted its title. The case

has no bearing here. It involved only riparian right to accretion.

These cases are plainly distinguishable from *Horne* v. *Smith*, *French-Glenn Live Stock Co.* v. *Springer*, *Granger* v. *Swart*, and others above cited therewith. Justice Miller, who delivered the opinion in *Granger* v. *Swart* (*supra*), concurred in the opinion in *Railroad Company* v. *Schurmeier*. In *Horne* v. *Smith* the court cites with evident approval the State decisions in *Lammers* v. *Nissen*, *Glenn* v. *Jeffrey*, *Whitney* v. *Detroit Lumber Company*, and *Lally* v. *Rossman*, so that the court did not deem them inharmonious with its decisions in *Railroad Company* v. *Schurmeier* and *Hardin* v. *Jordan*. At the same term of court with *Horne* v. *Smith*, the court decided *Grand Rapids and Indiana R'd Co.* v. *Butler* (159 U. S, 87), therein calling attention to the former case as instructive, and on wholly different facts, and citing *Hardin* v. *Jordan* and *Mitchell* v. *Smale*, distinguishing them.

It thus is apparent that none of these decisions are in conflict with the decisions of this court relied upon by appellants in support of their contentions, and as the present case must be controlled by the laws of the United States for disposal of the public domain, as they are construed by the Federal courts, a further review of the cases cited by appellees under this head is unnecessary.

NO EQUITY IS SHOWN IN THE BILL.

The case is even weaker in its equitable than in its legal aspect. If complainants' legal right to a bound-

ary upon the lake be conceded, for the purposes of argument, no ground exists for equitable relief. If complainants own the lands in question (1) they have adequate remedy at law; (2) no impending, irreparable injury is shown; (3) or threat of repeated trespass; (4) the facts do not present a case for interposition of equity to avoid a multiplicity of suits; (5) there is a defect of parties to bill regarded as bill of peace; (6) complainants had notice of the fraud against the consequences of which they seek relief; (7) the suit is essentially against the Government for specific performance of a false representation made by the plat, and will not lie, because the Government has not consented to be sued in such form of action; but were it otherwise, equity will not, in appellees' behalf, grant relief by establishing a boundary, and so recognize and sanction a claim devoid of equity, which it would cancel in a suit by the Government; (8) and finally, it necessarily involves questions of administration, with which the courts will not interfere.

If appellees own these lands, they have ample remedy at law.

Their claim is that, by force of the patents based upon a fictitious survey and false plat, their fractional lots must be extended to border upon the lake. There is no equitable right to the large excess of land claimed, which they never purchased and the Government never sold. If the boundary of their land is the shore of Cedar Island Lake, that is purely a legal right, arising from the facts. But it is a fundamental

doctrine that it is not the province of a court of equity to determine or establish purely legal rights.

Section 723 of the Revised Statutes declares that:

> Suits in equity shall not be sustained in either of the courts of the United States in any case where plain, adequate, and complete remedy may be had at law.

In *New York, etc. Co.* v. *Memphis Water Co.* (107 U. S., 205, 214), the court say:

> This enactment certainly means something; and if only declaratory of what was always the law, it must, at least, have been intended to emphasize the rule, and to impress it upon the attention of the courts.

In *Whitehead* v. *Shattuck* (138 U. S., 146), quoting from its decision in *Buzard* v. *Houston* (119 U. S., 351), the court held (p. 151) that:

> Whenever a court of law is competent to take cognizance of a right, and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury.

The rule is jurisdictional to relief in equity, and enforced in repeated decisions. It is enforced by the court *sua sponte*, though not raised by the pleadings or briefs of counsel. *Hayward* v. *Andrews* (106 U. S., 672); *Parker* v. *Winnipiseogee, &c., Co.* (2 Black, 545); *Fassett* v. *Gregg* (113 U. S., 551); *Smith* v. *Bourbon Co.* (127 U. S., 105, 111); *Russell* v. *Clarke's Exr.* (7

Cranch, 69, 89); *Dows* v. *Chicago* (11 Wall., 108, 112), and numerous other decisions.

Nor is there jurisdiction from impending irreparable injury.

The fear, or liability to irreparable injury, is but a flimsy pretext, conclusively negatived by the evidence in the record. The township had been resurveyed by Patton in 1893 under authority of the county board (record, p. 144); some surveys had also been made by Cook (record, p. 145). Croswell, the defendant (record, p. 191) had made surveys in the township, locating the actual meanders of the lake, and testified (record, p. 195) that a survey could be made by him "without any material injury to the soil or timber;" that he (record, p. 200) "wouldn't have to cut very much valuable timber." Surveys had been made, and were being made, during the pendency of the suit, at the instance and with consent of both parties, by which the maps were prepared. The allegation and claim of fear of irreparable injury was but a pretense upon which to found a claim. If appellees' claim of ownership were well founded, the proposed survey would be but a casual trespass, occasioning no irreparable injury. Facts must be distinctly averred, which show that apprehension of irreparable injury is well founded. As held in *Russell* v. *Clarke's Exrs.* (7 Cr., 69, 89), a rule of chancery jurisdiction "can not be abused by being employed as a mere pretext for bringing causes, proper for a court of law, into a court of equity."

It was held in *Cruickshank* v. *Bidwell* (176 U. S., 73, 81), that—

> The mere assertion that the apprehended acts will inflict irreparable injury is not enough. Facts must be alleged from which the court can reasonably infer that such would be the result.

In *Watson* v. *Sutherland* (5 Wall., 74, 79), the court held that—

> The absence of a plain and adequate remedy at law affords the only test of equity jurisdiction, and the application of this principle to a particular case must depend altogether upon the character of the case as disclosed in the pleadings.

Goodell v. *Lassen* (69 Ill., 145, 147); *McHenry* v. *Jewett* (9 N. Y., 58, 62); *Branch Tpk. Co.* v. *Supervisors of Yuba Co.* (13 Cal., 190); *Jerome et al.*, v. *Ross* (7 Johns., Ch. 315, 336); *Spofford* v. *B. & B. R. R. Company* (66 Me., 51, 53).

Nor can this suit be maintained upon the ground of threatened trespass.

In *Citizens' Coach Company* v. *Camden, etc., Company* (29 N. J. Eq., 299, 303), the court held that an injunction—

> is the strong arm of equity, that never ought to be extended unless in cases of great injury, where the courts of law can not afford an adequate or commensurate remedy in damages. The court always, to restrain a trespasser, expects a strong case of destruction or irreparable mischief to be made out, or that the trespass should be continued so long as to become a nuisance.

In *Litchfield* v. *Register and Receiver* (9 Wall., 575) the plaintiff claimed, as appellees do here, that he was owner of the lands which those officers were offering as public lands, and asked an injunction restraining them from so doing. The court denied the writ, holding that remedy existed at law, after issue of patent, and that administration by the executive department would not be interfered with by the courts. The court (9 Wall., 578) held:

> After the land officers shall have disposed of the question, if any legal right of plaintiff has been invaded, he may seek redress in the courts. He insists that he now has the legal title. If the Land Department finally decides in his favor, he is not injured. If they give patents to the applicants for preemption, the courts can then in the appropriate proceeding determine who has the better title or right.

The decision in *Noble* v. *Union River, &c., Co.* (147 U. S., 165), cited by appellees, is not in conflict with the principle so announced. In that case there was no remaining administrative question as to the surveys, boundary, or right to the lands involved. Every question had been finally determined, so far as the land department was concerned, and its authority terminated. The acts had been done which under the law vested in the railway company the right of property in its right of way. The act restrained was an attempt of the Land Department to resume jurisdiction of a matter in respect to which it had become *functus*

officio. The court limits that decision in the subsequent case of *Cruickshank* v. *Bidwell* (*supra*), saying (176 U. S., 80):

> The Government raised no point as to the form of the remedy, and deprivation of a vested legal right of property, acquired before any suggestion that it could be taken away, was there threatened. And it appeared that the only remedy was through equity interposition. But we are unwilling to extend that precedent.

Nor is there in this case jurisdiction in equity to avoid a multiplicity of suits.

A bill of peace will not lie against independent trespassers. (Adams Eq., 200, 6th Am. ed., 408.) The jurisdiction of equity to prevent a multiplicity of suits is not of itself and alone an independent source or ground of jurisdiction, and will not create a jurisdiction in equity, where there is not a prior existing cause of action. (Pomeroy Eq., secs. 250 and 181.) The rule is stated by Judge Story (Story's Eq., sec. 856,), that:

> The danger of judicial proceedings is not an injury justifying judicial proceedings. To entitle a party to maintain a bill of peace, it must be clear that there is a right claimed which affects many persons, and that a suitable number of parties in interest are before the court, for if the right is disputed between two persons only, not for themselves and all others in interest, but for themselves alone, the bill will be dismissed, for it can not conclude any persons but the very defendants.

There is a defect of parties to the bill regarded as a bill of peace.

It appears by the bill (record, p. 10) that five certain persons named, in 1892, settled upon and occupied these lands, "claiming the same to be unsurveyed unoccupied Government lands, and they still occupy the same," and that they petitioned for the survey, claiming to be citizens of the United States "entitled respectively to enter the unappropriated public land of the United States," and that they have improved them. It thus appears that these persons have made settlements upon these lands as public lands, and have therein acquired rights of entry when they are surveyed and opened to settlement entry. But those persons are not made parties to the bill. In a like case (*Litchfield* v. *Register and Receiver*, 9 Wall., 575, 578), the court held:

> It appears on its face that the register and receiver have no real interest in the matter, but that persons not named are asserting before them the legal right to preempt these lands. These persons are the real parties whose interests are to be affected and whose claim of right is adverse to plaintiff. If the court should hear the case and enjoin perpetually the register and receiver from entertaining their applications, they have no further remedy. That is the initial point of establishing their right, and in this mode a valuable and recognized right may be wholly defeated and destroyed, without the possibility of a hearing on the part of the party interested. This is not a case in which the land officers represent these claimants. They have

no such duty to perform. They might let the injunction be issued without defense, and thus a proceeding almost *ex parte* be made to strangle the incipient right of the actual settler on the public lands. If it can be done in this case, it can be done in every other in which a plaintiff is willing to proceed against the officers, without bringing the settler on the land before the court.

The court held in *Craig* v. *Lietensdorf* (123 U. S., 189, 207) that a decree on such a bill could operate only "*in personam* and *inter partes*, nowise affecting the rights of those not parties to the suit." To the same effect are *Pope et al.* v. *Melrose et al.* (2 A. K. Marsh, Ky., 239, 240); *Wolfe et al.* v. *Burke et al.* (56 N. Y., 115, 120); *Poyer* v. *Desplaines* (123 Ill., 111, 117-118). This should alone be decisive of the present case, that the bill can not be sustained. The complainants can not under the guise of a bill of peace bar the rights of these persons, not parties, and who have not been heard. The decree could not conclude them, but their rights would remain unadjudicated and without remedy. They are not numerous, and are asserting independent rights to separate tracts entirely capable of settlement in proceedings at law and by legal remedies.

It was held in *Fellows* v. *Spaulding* (141 Mass., 89, 93) that a bill of peace is addressed to the sound discretion of the court, and will not be entertained unless it appears that there is a practical necessity for the court to prevent vexatious litigation. The bill, on the contrary, discloses that the parties are not numerous; that

if complainants have legal title, they also have complete legal remedy, and that the adverse rights asserted are separate and distinct and not common. Such facts are fatal to the bill. *Hopgood* v. *Hewitt* (119 U. S., 227, 234); *Grand Chute* v. *Winegar* (15 Wall., 355, 372).

Appellees have not shown, and under the established facts could not have shown, that their purchase was without notice of the fraud against the consequences of which they seek relief, and was in reasonable reliance upon the representation of the survey and plat that the fractional lots bordered upon the lake.

The circuit court's findings numbered 2, 3, 4, 8, and 9, when taken together, unmistakably show that appellees purchased with notice that the land in controversy was never in fact surveyed, and that Howe's meander line so far departed from the shore line that it could not be reasonably regarded as an approximation of the latter. Appellees were not misled. In law they could not, and of course they did not, shut their eyes to the incontrovertible evidence borne upon the face of the land in controversy at the time of their purchase, as well as before and since, that the meander line did not even approximate a fair or honest effort to follow the shore. They could not have understood that they were getting the land here in controversy.

The tracts were examined by appellees' agents before their purchase. Flinn testified (record, pp. 82 and 105): "We had no knowledge whatever of any fraud or anything of that kind in connection with this survey." Murphy testified (record, pp. 85 and 108):

> I relied upon the plats and Government descriptions that they were bounded by the lake.

> I bought and paid for the timber, which was estimated up to the lake shore. * * *
>
> I took the report and examination of my woodsmen, relying on the Government plat that the lands were bounded by the lake. * * *

The testimony of Robinson (record, pp. 110, 112) and Dorr (record, p. 130) is less clear upon this point. They all testify that the estimates of timber were made for them by their agent, Eveleth, who went over the ground. He testified (record, p. 118) that he knew when he looked at the land that the fractions north of the lake were larger than they appeared to be on the plat, but (record, p. 119) he did not report it; that he took a compass and plat with him, and understands running lines and finding corners (record, p. 120). *He failed to find any lines or corners interior to the township*, and started from corners found on the north township line (record, p. 121). "It was three-fourths of a mile," or "a little over that," from the corner of sections 3 and 4 on the township line to the lake (the distance should have been about 27 rods, and was 240 or more). (Record, pp. 122 and 127.) He found no marks whatever (record, p. 123), "*practically there was no meanders to it*" (record, 123). "*There were no traces of any Government survey*," *interior to the township lines.* (Record, p. 127.) "*I concluded the Government was not very strict in making their acceptance of surveys.*" "*It would show me that corners had not been established.*" (Record, p. 127.) He looked for quarter posts, but "*there was no line established;* we looked where we thought a line should be and didn't find them nor any

markings north of the lake, except section corners on the town line." (Record, p. 128.) No acreage was marked by the land officers on the plats furnished him; as a rule he did not ask for acreage unless it was for a piece he expected to make a survey on.

This is all the testimony as to knowledge of the appellees and their estimator of fraud or mistake in the survey. It is, however, stipulated (record, p. 103):

> 7. prior to the purchase by complainants, or by any of them, of any of the lands surrounding said lake as platted, in sections two (2), three (3), four (4), nine (9), ten (10), and eleven (11), in said township fifty-seven (57), said lands were at their instance and in their behalf examined by experienced and competent woodsmen, and the general and riparian character thereof ascertained, and the quantity of timber thereon estimated and reported by such woodsmen to said complainants before they purchased said lands.
>
> 8. Said woodsmen, and all land lookers and estimators, were, and are, accustomed to locate, survey, and examine public lands and timber lands by reference to, and by the aid and direction of, the purported Government plats relating to such lands, *and of the section and other posts, lines, and markings established by the Government surveyor upon such lands; but when said lands were so examined* as aforesaid, and when the complainants, and each of them, acquired the interests in the respective tracts of land surrounding said lake now claimed by them, respectively, *it was impossible to locate any Government subdivision in said*

township, except by measurement from the exterior lines of said township, *by reason of the entire absence of interior lines or markings, and of corner and quarter posts;* and at the time said lands were originally entered in the Government Land Office *location thereof*, except as aforesaid, *was likewise impossible.*

But complainants do not, by the stipulations of this paragraph, admit that they had any actual knowledge of the facts therein stated at the time they acquired said lands.

It thus clearly appears that no evidences existed on the ground interior to the township that any survey had been made, although the surveyors' markings were easily found on the township line made at and about the same time as those within the township should have been made The estimator knew the lots were unusually large and that the excess of land was covered by timber trees that will not grow in water; that the banks of the lake were high, sloping, agricultural land, instead of low and swampy, and that the outlet was not in section 11, as indicated, but was near the southwest corner of section 2; and that a large area, 1,000 to 1,200 acres of land, lay between the platted meander line and the actual lake.

In view of such facts, resting upon admissions and testimony produced by appellants, it can not be reasonably contended that they had not knowledge and were not chargeable with knowledge of fraud or mistake in the survey.

The matter was patent. Appellees were bound to know the law regulating surveys of public lands.

They went upon and examined the lands. No surveyors' marks were there. The distances to the lake greatly exceeded that shown by the survey and those fixed by law for governmental subdivisions of land. No water body lay near the purported meander. They were thereby put upon their inquiry. They could not be deceived, for they had no right to rely upon the survey. On this head, Pomeroy's Equity, second edition (secs. 892 and 894), says:

> 892. * * * As a generalization from the authorities, the various conditions of fact and circumstance with respect to the question how far a party is justified in relying upon the representation made to him may be reduced to the four following cases, in the first three of which the party is not, while in the fourth he is, justified in relying upon the statements which are offered as inducements for him to enter upon certain conduct. 1. When, before entering into the contract or other transaction, *he actually resorts to the proper means of ascertaining the truth and verifying the statement.* 2. When, having the opportunity of making such examination, he is charged with the knowledge which he necessarily would have obtained if he had prosecuted it with diligence. 3. When the representation is concerning generalities equally within the knowledge or the means of acquiring knowledge possesed by both parties. * * *
>
> 894. * * * If, in a contract of sale or of leasing, representations are made by the vendor concerning *some incidents*, qualities, or attributes of the subject-matter *which are open and visible,*

> *so that the falsity of the statement is patent to any ordinary observer, and it is made to appear that the purchaser, at or shortly before the concluding the contract, had seen the thing itself which constitutes the subject-matter, then a knowledge of the facts is chargeable upon such party.* * * * This special rule concerning patent defects requires that the thing concerning which the statements are made should be seen or otherwise personally known by the purchaser, and that the defects should be plainly open and patent to any ordinary observer, and especially that no means should be used to conceal them, or to divert the buyer's attention from them, or in any way to prevent a fair inquiry.

Appellees purchased under homestead entrymen, and the law of the entry was itself notice. By Exhibits F and I (record, pp. 257, 262) the source of title to lots 1, section 3, 8, section 4, and 4, section 9, was a homestead entry by Petrie, and purported to comprise 95 acres. The law limited the entry to 160 acres. (See sections 2289, 2304, and 2306 Rev. Stat.) The appellees could not expect thereby to obtain title to 270 acres, as now contended and as now results if those lots as lying on the face of the earth ran to the lake and included the land between the meander line and the water. So also the source of title to lots 2, in section 3, and 1, in section 4, was a homestead entry by Koechler, limited to 160 acres, and purported to comprise 105 acres. The appellees could not expect thereby to acquire 350 acres, as contended and as now results if these lots as lying on the face of the earth ran to the

lake. Nor could the patentees honestly acquire such area of land by their homestead entries, limited by law to 160 acres each.

The appellees by purchase took only what the patentees acquired. No question of the appellees' good faith is involved. Their knowledge or lack of knowledge of the fraud can not restrict or extend the actual grant made by the Government under its patents. However, neither the appellees nor their grantors could be *bona fide* purchasers in the sense that they were without notice of the fraudulent character of the survey, or in reasonable belief that such fractional lots extend to the border of the lake. The actually observed lack of evidences of survey, blazed trees, or established corners, and the excess of area, were notice that the survey terminated at the meander line; that such line was the boundary of the lots, and that the land beyond that was unsurveyed. There were patent physical evidences that no lake ever existed at approximately the place of the meander line.

Suit is essentially one against United States to which it has not assented. Equity will not in appellees' behalf grant affirmative relief by establishing a boundary and so recognize and sanction a claim which it would cancel in a suit by the Government and thereby establish an inequitable demand.

The suit is essentially and in substance one against the Government for specific performance of the representation made by the plat. It is a suit in equity, and must be governed by equitable principles. The Government has not consented to be sued in such manner. (*United States* v. *Schurtz*, 102 U. S., 378, 404.) If it

can not be sued in such form directly that relief can not be given indirectly in substance and effect, under the guise of an injunction against a trespass, or a survey, in a suit against subordinate officers.

But, for argument, passing this fatal objection to the proceeding, Howe was a subordinate officer, acting under specific statutory instructions, and his representation, outside of his authority and in violation of his instructions, do not bind the Government, as held by the court in *Whiteside* v. *United States* (*supra*), and in *Moffat* v. *United States* (*supra*).

But were the law otherwise, the court would not, in equity, decree a specific performance. Among the essentials to compelling the specific performance of a contract given by Pomeroy's Equity (2d ed., sec. 1405) are that—

> * * * It must be, in general, mutual in its obligation and in its remedy. *The contract must be free from any fraud, misrepresentation even though not fraudulent, mistake, or illegality.* * * * The *contract must be perfectly fair, equal, and just* in its terms and in its circumstances. The contract and the situation of the parties must be such that the remedy of specific performance will not be harsh or oppressive.

Again, the same author, section 860, says:

> * * * The equitable remedy of the specific enforcement of contracts, even when they are valid and binding at law, is not a matter of course; it is so completely governed by equitable considerations that it is sometimes, though improperly, called discretionary; *it is never*

granted unless it is entirely in accordance with equity and good conscience. It is therefore a well-settled rule that in suits for the specific enforcement of agreements, even when written, the defendant may by means of parol evidence show that, *through the mistake of both or either of the parties*, the writing does not express the real agreement, or that the agreement itself was entered into *through a mistake as to its subject-matter or as to its terms.* In short, *a court of equity will not grant its affirmative remedy to compel the defendant to perform a contract which he did not intend to make, or which he would not have entered into had its true effect been understood.* What is thus true of mistake is equally true of a defense based upon fraud or surprise. Wherever the defendant's mistake was, either intentionally or not, induced, or made probable or even possible, by the acts or omissions of the plaintiff, then, on the plainest principles of justice, such error prevents a specific enforcement of the agreement. Such cooperation by the plaintiff, however, is not at all essential. *A mistake which is entirely the defendant's own, or that of his agent, and for which the plaintiff is not directly or indirectly responsible, may be proved in defense, and may defeat a specific performance.* This is indeed the very essence of the equitable theory concerning the nature and effect of mistake. * * *

Under circumstances like these a private party would not be decreed specifically to perform the representation of a plat so admittedly a mistake or fraud. So much more, were a suit for that purpose against the

Government permissible, a decree would not be rendered against it. The courts can not decree the correction of a survey. (*Cragin* v. *Powell*, 128 U. S., 691, 697.) Much less can they decree a survey never made, and which, if made, violates a statute. The sales of public lands are based upon the area at a price per acre, and no court of equity would compel a private party upon a contract for sale of five hundred and ninety-five acres, for a consideration measured by the acre, to convey fifteen hundred and twenty-five acres because of an error of the plat showing a false meander of a lake.

The suit necessarily involves questions of administration belonging to the Executive Department of Government with which the courts, either of law or equity, will not interfere.

In administering the public land laws the officers of the Land Department, as subordinate agents of the Secretary of the Interior as head of the Department, must necessarily consider and determine what are public lands, what lands have been surveyed, and what are to be surveyed; what lands have been disposed of, what remain to be disposed of, and what are reserved. The courts will not interfere with an executive officer where discretion and judgment are to be exercised, either by mandamus (*Gaines* v. *Thompson*, 7 Wall., 347, 453; *Secretary* v. *McGarrahan*, 9 Wall., 298, 312), or by injunction (*Brown* v. *Hitchcock*, 173 U. S., 473, 477; *Litchfield* v. *Register and Receiver*, 9 Wall., 575, 577). It is only when the Executive Department has finally acted on the matter and attempts to resume a jurisdic-

tion that is *functus officio* that the court will interfere by injunction. *Noble* v. *Union River Logging R. R. Co.* (147 U. S., 165); and of that case the court in *Cruickshank* v. *Bidwell* (176 U. S., 73, 80), said:

> The jurisdiction was sustained, but the Government raised no point as to the form of the remedy, and deprivation of a vested legal right of property, acquired before any suggestion that it could be taken away, was there threatened. *And it appeared that the only remedy was through equity interposition.* * * * *But we are unwilling to extend that precedent.*

As above shown, ample remedy exists at law if appellees' patents grant the lands in question, and no necessity exists for interposition of equity or for extension of that precedent.

Appellees participated in the proceedings before the Land Department leading up to the order for survey, and are thereby concluded as to all questions of fact and as to all further administrative proceedings of the Land Department.

The officers of the Land Department are by law made a special tribunal for administration of the public lands, and their jurisdiction is exclusive, and will not be interfered with by the courts. In *Litchfield* v. *Register and Receiver* (9 Wall., 575, 577) the court held:

> The principle has been so repeatedly decided in this court that the judiciary can not interfere either by mandamus or injunction with executive officers, such as the respondents here, in the discharge of their official duties, unless those duties are of a character purely ministerial,

and involving no exercise of judgment or discretion, that it would seem to be useless to repeat it here. * * *

The very first duty which the register is called on to perform, when an application is made to him to enter a tract of land, is to ascertain whether it is subject to entry. This depends upon a variety of circumstances. * * * Has it been granted by any act of Congress, or has it been sold already? These are all questions for him to decide, and they require the exercise of judgment and discretion. The bill shows on its face that these officers, in the exercise of this duty, were considering whether the reservations of the departments and the acts of Congress, and the claim of the plaintiff under them, took these lands out of the category of lands subject to sale and preemption, and he asks the court to interfere by injunction to prevent them from determining that question, and that the court shall determine it for them. * * * This is precisely what this court has decided that no court shall do. After the land officers shall have disposed of the question, if any legal right of plaintiff has been invaded, he may seek redress in the courts. He insists that he now has the legal title. If the land department finally decides in his favor, he is not injured. * * *

It appears on its face that the register and receiver have no real interest in the matter, but that persons not named are asserting before them the legal right to preempt these lands. These persons are the real parties whose interests are to be affected and whose claim of right

> is adverse to plaintiff. If the court should hear the case and enjoin perpetually the register and receiver from entertaining their applications, they have no further remedy. That is the initial point of establishing their right, and in this mode a valuable and recognized right may be wholly defeated and destroyed, without the possibility of a hearing on the part of the party interested. This is not a case in which the land officers represent these claimants. They have no such duty to perform. They might let the injunction be issued without defense, and thus a proceeding almost *ex parte* be made to strangle the incipient right of the actual settler on the public lands. If it can be done in this case, it can be done in every other in which a plaintiff is willing to proceed against the officers, without bringing the settler on the land before the court.

The authority thus conferred carries with it the right to conclude the parties before it for all purposes of the completion of its administrative duties. The Land Department is charged with the survey of the public domain, and must therefore primarily determine what are public lands subject to survey and disposal under the public-land laws. The parties were heard and the matter was decided by the Secretary of the Interior October 29, 1896 (Record, p. 51), and is reported in 20 Land Decisions, 28, and 23 Land Decisions, 430. Such decision, like that of any other tribunal, must be conclusive upon the parties until by a direct proceeding it can be brought to a proper court for review.

To say that such decision can be brought collaterally in question, and that the matter can be taken from the jurisdiction of the Land Department to the courts before the Land Department has taken final action, is violative of every principle of the jurisdiction of special or inferior tribunals, and of the finality and conclusiveness of their adjudications.

In *Brown* v. *Hitchcock* (173 U. S., 473, 477), it is held:

> As a general rule no mere matter of administration in the various Executive Departments of the Government can, pending such administration, be taken away from such Departments and carried into the courts; those Departments must be permitted to proceed to the final accomplishment of all matters pending before them, and only after that disposition may the courts be invoked to inquire whether the outcome is in accord with the laws of the United States.

In *Quinby* v. *Conlan* (104 U. S., 420, 426), the Supreme Court said:

> It would lead to endless litigation, and be fruitful of evil, if a supervisory power were vested in the courts over the action of the numerous officers of the land department on mere questions of fact presented for their determination. It is only when those officers have misconstrued the law applicable to the case, as established before the department, and thus have denied the parties rights which, upon a correct construction, would have been conceded

> to them, or where misrepresentations and fraud have been practiced necessarily affecting their judgment, that the courts can, in a proper proceeding, interfere and refuse to give effect to their action.

And again, the same court, in *Steel* v. *Smelting Company* (106 U. S., 447, 450), said:

> We have so often had occasion to speak of the Land Department, the object of its creation, and the powers it possesses in the alienation by patent of portions of the public lands, that it creates an unpleasant surprise to find that counsel, in discussing the effect to be given to the action of that department, overlook our decisions on the subject. That department, as we have repeatedly said, was established to supervise the various proceedings whereby a conveyance of title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation. Such has been the uniform language of this court in repeated decisions.

It is respectfully submitted that there is no precedent for the course taken by appellees, and that a suit of this kind can not be maintained.

If the Land Department errs in its construction of the law and grants a patent to the wrong party, such error can be reviewed in the proper action. But until it has so acted, its proceedings are not subject to judicial control. It is therefore contended that as appellees appeared in the proceedings for ordering the survey, and were fully heard, they are for all administrative proceedings of the Land Department concluded, and can not invoke the aid of the judicial tribunals by any suit in law or equity, until the Land Department may have issued patent for the land, when the aid of the courts may be invoked, in a proceeding against adverse claimants, for title to the lands claimed.

The decree is erroneous, because:

First. The lands in question are unsurveyed public lands, and as such not subject to disposal.

Second. The Government is not bound by the false and frauduleut representation of its subordinate officer, the surveyor, that a survey had been made.

Third. The statute regulating surveys of public lands in fixed square subdivisions, together with the entire absence of all marks and evidences of survey, was notice that no survey had been made.

Fourth. The field notes, and features of the ground totally irreconcilable therewith, and the fact that no lake or body of water was at or near the indicated meander line, was notice and evidence that no survey was made, and that the survey did not extend to the lake, and was not intended to extend to the lake, and that the lake must be rejected as a false call of the sur-

vey, and the tracts sold must terminate at and be bounded by the meander line.

Fifth. There is no equity in the bill in that: (1) appellees have adequate remedy at law; (2) no impending, irreparable injury is shown; (3) nor any continuing trespass or nuisance; (4) nor multiplicity of suits to be prevented; (5) there are no proper parties to the bill regarded as a bill of peace; (6) appellees are chargeable with notice of the fraudulent survey; (7) the action is substantially one against the Government for specific performance, and the Government is not concluded by the fraud of its subordinate officer making the fraudulent return of survey; (8) the suit is subversive of executive administration.

Sixth. The appellees are for all administrative purposes concluded by participation in the proceedings before the land department.

The decree should, therefore, be reversed, and the bill dismissed.

Respectfully submitted.

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JOSEPH R. WEBSTER,
Assistant Attorney.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

P. H. KIRWAN ET AL.
v.
SIMON J. MURPHY ET AL. } No. 161.

APPELLANTS' REPLY BRIEF.

Before the preparation of the brief of appellants a brief by Mr. Benton Hanchett was filed for appellees. Since the preparation and filing of appellants' brief the appellees have filed two further briefs, one by Mr. M. H. Stanford and one by Mr. S. D. Luckett. For brevity, the last two will be designated herein, that by Mr. Stanford by the letter "S" and that by Mr. Luckett by the letter "L," each with page references.

Government not bound by acts of agents in same manner as private persons. In reply to S. 14–15.

Appellees contend that the Government is bound, in its transactions for disposal of the public lands, in the same manner as private persons. This is only qualifiedly true. The Government can deal only by agents—its officers. The powers of its agents are limited by public statutes, which are notice to the world.

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By the acts of its agents in clear violation of law the Government is not bound. Thus, in *Burfenning* v. *Railroad Company* (163 U. S., 321), this court held that an additional homestead entry permitted in an incorporated city by the land department, though carried to a patent signed by the President of the United States, and not assailed by the Government, and though the fact did not appear on the face of the patent or entry papers, was void, conveying no right or title whatever.

As shown in appellants' brief, pages 23–24, frauds of its officers do not conclude the Government as do those of agents of private persons when acting within their general powers.

Survey must precede disposition of public lands. Effect of plat of Howe survey as a representation. Iowa rule. In reply to S. 15–17.

No officer has power to dispose of public lands until a survey has been made. (Appellants' brief, 15–17, and *Schlosser* v. *Hemphill*, Iowa, June 3, 1902, 90 N. W., 842.) The law directs how surveys shall be made, and it may be admitted, for purpose of argument at this point, that a plat filed in the local land office—"the place of sale"—may be taken as a representation that a survey has been made of the lands thereon indicated. But is the Government estopped to assert that *lands not thereon indicated have not been surveyed?* Appellees (S. 15) assert that it is, and L. 20 so implies. The appellants say it is not. This is the gist of the contentions.

An estoppel can be no broader than the representation upon which it is based. The meander line merely represented that any land beyond that line *had not been surveyed.* As said by the court in *Niles* v. *Cedar Point Club* (175 U. S., 300, 308):

> All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary *there may be found forest or prairie, land or water, Government or Indian reservation.*

It represents merely that the surveyor has not set his foot or his instrument *there.* If, in attempting to describe what is beyond the line of his survey, he makes a mistake, or acts fraudulently, how can it be said that the Government is estopped?

The appellees (S., 106) make a pictorial representation of what they contend for, which, for all purposes of illustration, is the same as appellants' similar map (appellants' brief, 22). The difference is that appellees' map is drawn from a purported resurvey of the north two tiers of sections by County Surveyor Patton. The township is claimed to be 90 rods in excess north and south. Patton apportioned the excess ratably among the *interior* sections "where no monuments were found," (for *none ever had existed*), but was controlled by the section corners on the sides of the township *where section corners had been established*, and so the interior east and west lines are thrown by him into zigzags. For purposes of argument the plats are identical.

Obviously, the approved plat made from Howe's fictitious field notes (Record 14) *was not a representation that Howe had surveyed the land between that fictitious meander line and the actual lake into any such form of subdivisions reaching to the actual lake as is contended for by appellees' plat* (S. 106), and is approximately shown (plat, appellants' brief, 22). Such a survey, if made, would be so flagrantly in violation of express statute that it must have been annulled as soon as it came before the Commissioner of the General Land Office. The questions then arise:

How can the plat in the record at page 14 be construed as a representation that the survey was as contended and shown in plat S. 106? And can the court decree from the representation, plat record, 14, that the survey, plat S. 106, was made, and so *judicially violate the statute*, when the surveyor could not lawfully have been, and was not by the Commissioner of the General Land Office, permitted to do so? Appellants' contentions on this head and review of authorities are found in the appellants' brief (25 to 51). In addition to the Iowa citations there made (appellants' brief, 34 to 37) must be added *Schlosser* v. *Hemphill* (90 N. W., 842), June 3, 1902, wherein that court expressly adheres to its decisions in *Glenn* v. *Jeffrey* and *Grant* v. *Hemphill*, cited in appellants' brief, 34, and distinguishes and explains *Schlosser* v. *Crookshank* (96 Ia., 414), cited by appellees (S. 120) and which they have heretofore strenuously contended in effect overruled those decisions. Instead of overruling their former decisions,

the court affirms them, and thus settles the law of that State to be as defined in *Glenn* v. *Jeffrey* and *Grant* v. *Hemphill.*

Appellees' claimed bona fides. In reply to S. 17–54 and L. 6–10.

Appellees' next contention (S. 17 to 46) is that as a question of fact they were *bona fide* purchasers. Their testimony is set out at length to show that they purchased for value, believing that the fractional lots bordered by the fictitious meander line extended to and were bounded by the actual lake. The appellees' *bona fides* is not the crucial question, or yet a material one. An erroneous belief of the extent of their grantors' patents would not give appellees a greater area of land, or more extended title, than the patents conveyed. Whatever these patents conveyed, the patentees and the Government were concluded by them. (*Russell* v. *Maxwell Land Grant Company*, 158 U. S., 253, 259.) The question is purely one of boundaries, viz: Did the patents to the fractional lots convey to the meander line only, or did they include the land between the fictitious line and the actual lake?

But if appellees' *bona fides* be for purpose of argument conceded to be a material question, the record shows they had notice. (Appellants' brief, 51 to 56, and 69 to 78, inclusive.) The *land was there lying high above the lake* and clothed with a primeval forest of great "trees such as will not grow in water." There were no surveyors' marks or monuments there. Of at least eighty monuments and corners that should appear, seventy-eight do not appear. None but the quarter

post west side of section 36 and the northwest corner of that section exist or ever existed. Of the many blazed trees marking the surveyors' lines and the many marked witness trees to the seventy-eight interior corners never set (at least two to each corner), none were ever found, though such footprints or finger marks of the surveyor were all readily found on the exterior lines of the township which he did run. The appellees' expert timber cruiser, Eveleth, who understood running lines, was over the land before their purchase. *He noticed* (R., 122, 127) that it was "three-fourths of a mile," or "a little over," from the corner of sections 3 and 4 to the lake, when it should have been but 27 rods. It was 240 rods or more. He says (R., 127): "*There were no traces of any Government survey.*" "*I concluded the Government was not very strict in making their acceptance of surveys.*" "*It would show me that corners had not been established.*" "*There was no line established.*" There was therefore not only *the means of ascertaining the truth*, but also *the fact that appellants availed themselves of the means and actually observed and knew that no survey had been made of this land.* No amount of asseveration of ignorance and innocence can avail against *the proof of the fact of actual notice.*

The remainder of appellees' contention on this head (S. 46 to 54) is devoted to citation of decisions protecting *bona fide* purchasers—an unnecessary and, so to speak, an elementary proposition. But courts do not protect as *bona fide* purchasers those who, while in terms testifying they are such, clearly prove they are not.

The question is not as to the conclusiveness of the patents, but as to the extent and boundary of the tracts where a call is false. Reply to S. 54-57.

Appellees contend that a patent to land is the highest evidence of title, and that natural objects control courses and distances. As to the first part of this double proposition, no contention exists. The second part is also true as a general proposition, but having its recognized exceptions where a call is false or technical adhesion to it defeats the intent of the parties. The contention here is as to the boundary of the tract granted, the natural object not existing at or approximately near the meander line indicated in the fictitious field notes.

The patents must have operated at the moment of their issue to convey title to the precise tracts granted. The extent or form of the grant can not afterwards be changed by force of conditions existing, but unknown to the grantor at the date of the patent, as that would contravene the grantor's intent. If, therefore, the extraordinarily shaped tracts appellees claim were ever conveyed by the Government, they were so conveyed *and so were intended to be granted* at the date the patents for the lots were issued. A patent is not to be held void for uncertainty, and the extent of the grant must be determined by the patent itself. Hence, it can not be rationally presumed, in the case at bar, that it was intended to convey the absurdly formed tracts shown on the plat (p. 22) of the appellants' brief, or at S. 106. If the patents conveyed the land beyond the meander line, the form of the tracts must be ascertainable from

the terms of the patents or notes of *a survey upon which the patents are founded* fixing their boundaries and extent. The patents and plat to which they refer are the only permissible means from which to find the form and boundaries of the tracts granted. The patents give no description of their forms and the plat shows their forms are utterly unlike those the appellees claim, while the acreage shown on the plat as their forms appear there exactly coincides with the areas of the tracts formed as there shown.

Moreover, the fallacy of appellees' contention is shown by the fact that the patents, construed as they demand, would convey land in more than one section, contradicting the descriptive words of the patent itself, an inadmissible construction under *Horne* v. *Smith*, cited page 23 of appellants' brief.

The rule that monuments or natural objects control courses and distances has its exceptions and limitations, as is shown by many decisions of this and other courts collected in appellants' brief, 26 to 51.

The true rule is that *the existence of such monuments or natural objects failing at or approximately near the place indicated, the court seeks by aid of all the facts at its disposal to arrive at the real intention of the parties.* Upon this the appellants rest their contention.

It is not a conceded fact that a survey was made, but is insisted that no survey of the land in controversy was made. Reply to S. 57 to 70, L. 6 to 10

Appellees contend (S. 57 to 70) that from the record and conceded facts "it can not be questioned that a survey was actually made"—such as they ask to be

established by a decree. This claim is based on nothing more substantial than the averment in the bill, not admitted by the answer, and is in face of an express averment of the answer that Howe surveyed only the exterior lines of the township.

To the proposition "A" (S. 61) appellants make no contention. It must, however, be noted that counsel mistake both the facts involved in *Cragin* v. *Powell* (128 U. S., 691), therein cited, in that counsel say:

> The appellees claiming under the Wolf patent * * * claimed * * * that there was a strip of Government land left unsurveyed which did not pass to appellants' grantors, and was claimed under the Wolf patent from the State.

On the contrary, the court states the facts arising from the official survey by Connolly and a resurvey by McLeran, who claimed to have proceeded upon analogy to and in connection with Government resurveys by Gorlinski of adjoining townships (128 U. S., 693–694), that—

> These discrepancies are: (1) By the Gorlinski and the McLeran surveys the township *lacked* half a mile of being 6 miles square, *the eastern tier of sections thereof losing fully one-half of the area given by them in the official plat, which official survey establishes a full township as prescribed by law.*

Instead of there being an unsurveyed strip of a half mile wide, the attempt was to exclude from the township such amount of land actually surveyed, and then

adjust the tracts to a township line placed near to where the quarter line through the middle of the east tier of sections had been, thus shifting about a half a mile the actual location of all lands in the township! No such question as is stated in appellees' brief was presented in the case, and the point decided was that the power to make and also, with limitations indicated by the court, to correct surveys of public lands rests solely in the Land Department, and that when a survey *has in fact been made* and approved the courts have no jurisdiction to correct or vacate it.

The proposition "B" of this head (S. 68–71) is the gist of the whole controversy, involving the effect of a false call, the nonexistence of the natural object at or near its indicated place, and is discussed in the appellants' brief (25–51).

No resurvey of land once surveyed and sold is proposed to be made. The land in controversy has never been surveyed or sold. Reply to S. 71-72.

It is not questioned but that the rights of patentees to fractional lots bordered by Howe's fictitious meander line became fixed by the issue of patent. The controversy is as to *what those rights were*—whether the patents conveyed title to lands not surveyed and not in contemplation of the parties at the time of the grant.

This proposition and the eighth, S. 77, proceed upon the false assumption that the survey sought to be enjoined is a resurvey. It is not a resurvey, but an original one of a portion of township 57 north, range 17 west, omitted from Howe's survey.

The controversy is one of boundary—not of riparian rights. Reply to S. 72.

Appellees insist that a question of riparian rights is presented. Appellants (Government brief, 14) contend otherwise, and that the primary question, which must control all others, is the boundary or extent of the grant, where the monument or natural object—the lake—does not exist at or near the supposed meander line, but a large body of unsurveyed land lies between it and the meander line. In *Grand Rapids and Indiana Railway Company* v. *Butler* (159 U. S., 87) and *Hardin* v. *Jordan* (140 U. S., 371), relied upon by appellees, no question existed but that a survey had in fact been made to the shore. The questions were strictly what riparian rights passed by the grant.

Fraud of the Deputy-Surveyor does not conclude the Land Department. Reply to S. 77; L. 6 to 10.

Appellees again contend that because the Commissioner approved a plat made by the surveyor-general from fictitious field notes, such plat can not be questioned as to lands not therein represented to have been surveyed. This is but iteration in other words of the second, fifth, and sixth propositions, S. 15, 57, and 71, and gains no force by frequent iteration. The appellants contend, for reasons before shown, that no estoppel arose.

The Patton or county surveyor's survey was ineffectual and invalid, and the Minnesota statute under which it was attempted to be made has been declared unconstitutional by the supreme court of Minnesota. It moreover could not affect the land in controversy. Reply to S., 78-97.

Appellees at great length insist that "Plat No. 1," S. 98, and its derivative "Plat No. 2," S. 106, rather than map at page 22 of appellants' brief, are proper plats of the location and subdivision of the lands in controversy, if their contentions are sustained and they are adjudged owners of the lands. It is an immaterial contention, for two reasons: First. "If the Government, by fraud of Howe in returning fictitious field notes of a survey never made, has lost title to these lands, it is obviously a matter of no concern to the Government or its officers how the land shall be subdivided among the owners of lots bordering upon Howe's fictitious meander line, but concerns only those receiving the fruits of his fraud. A second answer is that appellees do not seek a decree defining the form in which the unsurveyed land shall be subdivided. If the Government is owner, the land must be surveyed, as nearly as may be in square tracts, in compliance with the statutes regulating surveys of the public lands.

The plat, appellants' brief 22, is for purposes of argument merely, illustrative of the effect of the decree appealed from, establishing a survey as having been made violative of the statutes for surveys of the public lands. The two plats—that at appellants' brief 22 and that at S. 106, as shown (*supra*)—are for that purpose equivalents. The appellants will not be diverted from the real contentions involved by an insistence upon fictitious and immaterial questions, and thereby participate in or give countenance to an effort to confuse or to mislead the court into a consideration of them.

But this Patton, or county surveyor's, survey, though much importance is given to it in appellees' brief, can have no bearing here, or respecting the lands in controversy, for three obvious reasons:

(*a*) If the land in controversy is unsurveyed public land of the United States no survey of it by State authorities can have any validity. It must be surveyed under direction of the land department and in accordance with the laws of the United States for survey of the public lands.

(*b*) The Patton survey only assumed to establish "lost corners" and to retrace lines supposed to have been run by Howe, as indicated in his fictitious field notes, and so did not go inside of or set corners inside of Howe's meander line, or assume to subdivide the unsurveyed land lying between the fictitious meander line and the actual lake. Patton's lines are outside the fictitious meander line and affect only land outside such line.

(*c*) The statute under which the Patton survey was ordered and made was declared unconstitutional by the supreme court of Minnesota in *Davis* v. *Board of County Commissioners* (65 Minn., 310). That survey must be regarded as one made without authority of law and is therefore ineffectual and void.

Appellees misconstrue the decision in the French-Glenn Stock Company v. Springer. Reply to S. 97-102.

Appellees assert that the last expression of the court in *French-Glenn Company* v. *Springer* (185 U. S., 47) gives color to their contentions. The facts in that

case were in many respects parallel with those in the case at bar. Applied to the facts of this case that decision seems controlling. Here, as there, no lake existed at or approximately near the fictitious meander line; there had been no recession of its waters. Such being the parallel facts, the conclusion seems to follow, as said by the court (185 U. S., 52), that—

> * * * if there never was such a lake—*no water forming an actual and visible boundary—on* the north end of the lots, *it would seem unreasonable*, either to prolong the side lines *of the survey indefinitely until a lake should be found, or to change the situs of the lots laterally in order to adapt* it to a neighboring lake. * * *

The necessity to resort to a radical subdivision of the unsurveyed land is self-destructive of appellees' contention that a survey was made. Reply to S. 102–114.

Appellees are driven to contend for application to this case of the riparian rule for division of reliction and accretion by radial extension of boundaries of riparian proprietors. A fatal objection to this is that there has been no reliction or accretion to which such rule could apply, and it is therefore necessary to adjudicate that a survey was originally so made and approved in face of a statute requiring surveys to be in square form. While it is clear from the record that the land department did not and, presumably, could not have so flagrantly violated the law, yet the court with full knowledge of such fact is asked to decree that it did. This is nothing less than to ask the court itself to violate the statute through the form of an

untrue decree that the land department did. The proposition dissected and laid bare is well calculated to shock judicial conscience.

This is the refuge to which appellees are *coerced*, for by no other extension of the lines of survey could the water be reached without inextricable confusion and overlapping. So the appellees by the necessities of their contention are *coerced* to this self-destructive proposition.

In support of this contention appellees cite a group of cases none of which except *Cragin* v. *Powell*, noticed *supra*, arose upon a survey under statutes now existing which require definite square subdivisions of public lands. Among these cases is *St. Clair Company* v. *Livingston*, a case of riparian accretion. The decisions cited have no other relevance here than to support the two general propositions—not by appellants disputed—that a meander line is not in general a boundary, where laid along or approximately near a body of water; and that monuments and natural objects in general control courses and distances.

Departmental decisions not inconsistent with appellants' contentions. Reply to L. 11 to 25.

Appellees' brief, by Mr. Luckett, 11 to 25, is given to a general review of departmental decisions in what are claimed to have been similar cases. A reading of the cases will show that each and every of them differs from that at bar in the essential respect that *an actual survey had been made*. In La Follette's case (26 L. D., 453, 466), the south line of the section "was

run east until it 'struck the bank of Lake Michigan,' where a post was set." So also of the north line. Without reviewing the cases severally, this fact will be found existing in them all.

Where there has been an actual survey pursuant to which the Government has sold the lands and years have elapsed, the Land Department does not readily make corrective surveys to the unsettling of rights acquired in faith of surveys actually made upon which the Department and parties have acted in good faith, even though they may turn out to be erroneous.

Such a case was the recent one of Stensland (L. 21 to 28). The survey was made in 1858 and its accuracy had never been assailed. The meander line marking and bounding what should pass to the future State as its tide lands was actually run. The State, at its admission into the Union in 1889, thirty-one years after the survey, accepted and acted upon it and sold the excluded land. Though it was alleged that the line along Bakers Bay excluded some lands not properly tide lands, it appeared to the Department upon an examination of the official plat and of plats purporting to represent the true and very irregular water line that the case did not show fraudulent conduct of the surveyor, and that after forty-four years of acquiescence by the Government it was improper to disturb the titles so acquired from the State. In any event the real facts and the conclusion were not happily stated in the decision and it has been recalled for further consideration.

The great excess of quantity shows that no survey was in fact made, and that neither the Government, the entrymen, or the appellees could understand that the lands in controversy were granted.—Reply to S. 115–124.

Appellees' endeavor to minimize the effect of the great excess of quantity as an incident showing the intent and understanding of the parties and showing that no survey was in fact made. It is not material how much of that excess appellees would receive, but the aggregate excess, or quantity lost, must be considered in determining the weight to be given to it. Approximately 1,200 acres of valuable forested lands were falsely returned as part of a supposed lake of 1,800 acres, not by a process of inclusion and exclusion of arms of water and points of land, or because of any difficulty in following the sinuosities of the shore, but such compact and extensive bodies of land as conclusively show that no attempt at an actual, approximately accurate meander was attempted.

Excess area does not, of itself and alone, vitiate a survey made, but irregularities so great and so gross as to be startling are circumstances for consideration in determining the intent of the parties, and whether there was a survey or a fraud. That is all that appellants assert and is discussed (appellants' brief, 52–56); and the principal authorities appellees rely upon—*Newsom* v. *Prior* (7 Wheat., 7), and McIvers Walker (9 Cranch, 173)—are there discussed (appellants' brief, 56–60).

The asserted grounds of equitable jurisdiction are based upon a false assumption of the whole matter in controversy. Reply to S. 124,138.

The contentions that the court had jurisdiction to enjoin the survey, especially subdivisions a, b, c, and d (S. 124–136), proceed upon a false assumption of the entire subject of controversy as the premise upon which they rest. It may be conceded for argument here that if the patents for the irregular lots bounded by the fictitious meander line operated to convey title to all the unsurveyed land between that line and the lake, *then* defendants had no business there and the threatened trespass may be enjoined. But *if such patents did not so operate, or if the court can not in this form of action adjudicate that question as against the Government or the settlers, who are not made and can not be made parties to the bill*, so that the premise fails or is in doubt, then what becomes of the argument founded upon it and the conclusion deduced from it? Obviously there is no jurisdiction in equity of the subject-matter. The appellants' brief, 69–78, discusses that question.

The remainder of this contention, E., S. 136–138, is that the acts sought to be enjoined are ministerial only, and also rests upon the same false or assumed premise. The act of survey of public lands is clearly not ministerial, but administrative in character. (Appellants' brief, 78–83.) The survey of public lands never in fact surveyed is purely an administrative matter of which the courts have no jurisdiction. The court in *Russell* v. *Maxwell Land Grant Company* (158 U. S., 253, 259) makes the clear distinction and says that:

> It may be well to notice a distinction which interprets some dicta and decisions found in

respect to the jurisdiction of courts over boundaries. Whether a survey as originally made is correct or not is one thing, and that, as we have seen, is a matter committed exclusively to the Land Department, and over which the courts have no jurisdiction otherwise than by original proceedings in equity. While on the other hand, where the lines run by such survey lie on the ground, and whether any particular tract is on one side or the other of that line, are questions of fact which are always open to inquiry in the courts.

The lands in controversy here have never been surveyed. It is not proposed to resurvey lands once surveyed and disposed of, but to survey six specific unsurveyed sections of public lands. The proposed survey is original of lands omitted by Howe. It is, therefore, an administrative proceeding of which the courts have no jurisdiction.

The appellees have the affirmative and must show that they own the lands, by patent from the Government, the survey of which they seek to prevent. Reply to S. 138.

Appellees seem to contend, S. 138, that appellants upon the averments or conclusions of law of the bill are put upon the affirmative. Be the onus much or little, it clearly lies upon appellees to show such facts and legal rights as entitle them to the aid of chancery for their protection.

This proposition in fact stands upon substantially the same assumed premise as the last foregoing, viz, all claim of appellees of the extent and effect of the patents to the fractional lots bordering the fictitious

meander line are assumed to be true. Except and apart from the validity of such assertion, the proposition is ineffective.

There is no equity in the bill. Reply to S. 139-170; L. 2-6.

The different grounds for invoking the power of chancery for protection of legal rights advanced by appellees are discussed in appellants' brief, 60–83, to which reference is made without repetition or extended comment here.

Respectfully submitted.

WILLIS VAN DEVANTER,
Assistant Attorney-General.
JOSEPH R. WEBSTER,
Assistant Attorney.

NOTE.—Mr. John R. Van Derlip, counsel for the settlers upon these lands, who intended to participate in oral argument, has been prevented from attendance. His views of the legal questions involved are expressed in the letter printed as an appendix to this reply brief, to which letter attention is invited.

APPENDIX.

MINNEAPOLIS, MINN., *January 22, 1903.*

Hon. WILLIS VAN DEVANTER,
Department of the Interior,
Washington, D. C.

DEAR SIR: By reason of certain litigation pending in the district and supreme courts of this State, I shall be prevented from being present, as I had hoped to be, at the argument of the case of *Kirwan* v. *Murphy* in the Supreme Court of the United States, if it come up for argument, as the clerk advises me that it probably will, during the week beginning January 26.

I have recently received a copy of the brief for the appellees in that case and venture to direct your attention to one or two matters therein.

1. The entire contention of the appellees is based upon the false assumption that the patents under which they claim purport to convey all of the land down to the water line of Cedar Island Lake. This false assumption is the basis for the argument that the good faith of the appellees in acquiring the land from the patentees is a material circumstance. It is also the basis for the appellees' contention that the question involved in the case is not one of boundaries but of riparian rights.

2. The *bona fides* of the appellees, instead of being the crucial question in the case, is an entirely immaterial matter, for the reason that the appellees acquired,

and could acquire, no better title or greater territory than the patentees, their grantors, possessed under the patents. (*Russell* v. *Maxwell Land Grant Co.*, 158 U.S., 253, 259.)

3. It follows that the question involved is purely one of boundaries; that is, did the patents for the fractional Government lots convey to the meander line only, or did they include the land intervening the meander line and the lake?

4. The appellees contend that, notwithstanding the system under which the survey of this township purports to have been made, the lines of the fractional Government lots may be deflected in any direction as much and as far as may be necessary in order to reach a water boundary upon Cedar Island Lake. This is manifestly erroneous.

(*a*) It is palpable that, *at the moment of its issue*, a a patent conveys the precise tract of land granted thereby, and the extent or conformation of the grant can not be subsequently changed by mere force of conditions unknown at the date of issuance of the patents. It follows, therefore, that if the extraordinary tracts of land now claimed by the appellees have ever been conveyed by the Government, they were so conveyed (and so intended to be granted) at the time the patents for the various Government lots were issued.

(*b*) If any principle of law be established, it is the principle that the description in a patent must be *certain*, if the patent is not to be held void for uncertainty, and it is a cardinal rule that the extent of the grant must be determined by the patent itself.

Hence the argument at page 22 of the Government brief, that it can not be rationally presumed that, in the instance at bar, it was intended to convey the

absurdly formed bodies of land shown upon the plat facing that page, is uncontrovertible.

The necessity for the existence and enforcement of the principles above stated is conclusively exemplified by a comparison of the plat referred to with the one facing page 106 of the appellees' brief, where a similar attempt is made to illustrate the outlines of the various lots conveyed by the patents under which the appellees claim. Which is correct? If the patents conveyed the land beyond the meander line, there must be something in their terms to indicate the fact, and to indicate also the exact boundaries of the various tracts. As I have stated, the patents are the only criteria, and they provide no data for the determination of these questions beyond their reference to the plat (which shows the configuration of the tracts to be entirely different from that claimed by the appellees or shown upon the plat at page 22 of the Government brief) and the expressed acreage, which exactly coincides with the area of the fractional lots shown upon the plat.

5. Another important, and controlling, consideration in this connection, demonstrating the fallacy of the appellees' position, is that the patents, construed in the manner demanded by the appellees, would convey land in more than one section, which is an impossible construction under *Horne* v. *Smith*, cited on page 23 of the Government brief.

6. In the point beginning on page 78 of the Government brief, with reference to the exclusive jurisdiction of the Land Department, the following language from *Russell* v. *Maxwell Land Grant Co.* (158 U. S., 259), seems directly applicable:

In this connection it may be well to notice a distinction which interprets some dicta and decisions found in respect to the jurisdiction of courts over boundaries.

Whether a survey as originally made is correct or not is one thing, and that, as we have seen, is a matter committed exclusively to the Land Department, and over which the courts have no jurisdiction otherwise than by original proceedings in equity.

7. It is another false assumption on the part of the appellees (*passim*, but particularly in points VI, page 71, and VIII, page 77 of brief) that the survey sought to be restrained is a *resurvey*. It is not. It is a survey of that portion of township 57, range 17, *which was omitted* from the Howe survey.

8. Much reference is made to the so-called Patton survey, under which it is asserted that the division lines established by it are now recognized, and therefore should not be changed. I can not see that this survey has any bearing in the case.

(*a*) The division lines referred to are upon property outside of the land in controversy and to be embraced in the survey ordered by the Land Department.

(*b*) The statute under which the survey was made has been declared unconstitutional by the supreme court of Minnesota, so that the survey made by Patton, as county surveyor of St. Louis County, is void and ineffectual (*Davis* v. *Board of Co. Comm'rs*, 65 Minn., 310).

Special references to this survey in the brief for the appellees are found on pages 78 to 94, and 147 to 154.

9. The case of *Schlosser* v. *Hemphill* (90 N. W. Rep., 842) recently decided by the supreme court of Iowa, should be cited at the bottom of page 15 of the Government brief in support of the statement that a survey of Government land is a necessary prerequisite to the passing of title from the Government. It should also be cited at the top of page 37 as an additional case declaring that where no meander line was actually run,

or where the meander line as run does not approximately indicate the water-line, the meander becomes a boundary.

This case is important in that it reaffirms the doctrine of *Glenn* v. *Jeffrey* (75 Ia., 20) and *Grant* v. *Hemphill* (92 Ia., 218), and substantially overrules the case of *Schlosser* v. *Cruickshank* (96 Ia., 414), which has heretofore been strongly urged by the appellees as overruling the doctrine of the two cases just referred to, and is cited in the appellees' brief on page 160.

I regret that it has been impossible to obtain the consent of all parties to an advancement of the cases of the *Security Land and Exploration Company* v. *Burns and Weckey.*

Yours, respectfully,

JOHN R. VAN DERLIP.

FREE COPY.

FILED
APR 28 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

P. H. KIRWAN, as United States Surveyor-General, for the District of Minnesota, and THOMAS H. CROSWELL,

Appellants,

vs.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. FLINN and TEMPLE E. DORR,

Appellees.

No. 16

BRIEF IN BEHALF OF THE APPELLEES.

BENTON HANCHETT,
Of Counsel for Appellees.

M. H. STANFORD,
Solicitor and Counsel for Appellees.

JUDGE & DUNLAP, PRINTERS AND BINDERS, WASHINGTON, D. C.

SUPREME COURT

OF THE UNITED STATES.

P. H. KIRWAN, as United States Surveyor-General, for the District of Minnesota, and THOMAS H. CROSWELL,

Appellants,

vs.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA A. FLINN and TEMPLE E. DORR,

Appellees.

Brief in Behalf of the Complainants and Appellees.

The lands which are in controversy in this cause are situated in Township 57, North of Range 17 West, in the State of Minnesota, and are described as follows:

Lots 2, 3 and 4, of Section 1; Lots 1, 2 and 3, of Section 2; Lot 2 of Section 3; Lots 1, 3, 5, 6, 7 and 8, of Section 4; Lot 4, and the South West quarter of North West quarter of Section 9; Lots 1, 2, 3 and 4; the South East quarter of

North West quarter, and the North West quarter of South West quarter of Section 10, and Lot 3 of Section 11, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor-General.

The complainants, who are Appellees, derive their title to the lands through mesne conveyances from the patentees to whom said lands were conveyed by patents from the United States, which patents are set out in the Record as follows:

Exhibits I, page 262, J, page 263, K, page 264, P, page 274, Q, page 275, V, page 287, X, page 290, AA, page 296, and AB, page 298.

The descriptions, taken from the patents, are as follows:

Exhibit I, (R. p. 262) "Whereas, * * * the claim of Henry Koecher has been duly established, and duly consummated in conformity to law for the lot numbered two, of section three, and the lot numbered one, of section four, in Township fifty-seven, north of range seventeen, west of the fourth Principal Meridian in Minnesota, containing one hundred and five acres and thirty-five hundredths of an acre, *according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor-General.* Now know ye, that there is therefore granted by the United States unto the said Henry Koecher *the tract of land above described.*"

Exhibit J, (R. p. 263) "Whereas, * * * there has been deposited in the General Land Office Warrant No. 36,351, for eighty acres, in favor of Fitch R. Hunt * * * with evidence that the same has been duly located upon the South East quarter of the North West quarter and the North East quarter of the South West quarter of Section ten, in Township fifty-seven, North of Range seventeen west of

the fourth Principal Meridian in the District of lands subject to sale at Duluth, Minnesota, containing eighty acres, *according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor-General;* the said warrant having been duly assigned to James H. Ruttle, as aforesaid, and to his heirs *the tract of land above described;* to have and to hold the said land with the appurtenances thereof unto the said James H. Ruttle."

Exhibit K, (R. p. 264) "Whereas, James H. Ruttle, of St. Louis County, Minnesota, has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Duluth, Minnesota, whereby it appears that full payment has been made by the said James H. Ruttle * * * for the lots numbered one and two of section ten, in Township fifty-seven, North of Range seventeen west of the fourth Principal Meridian in Minnesota, containing sixty-eight acres, *according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor-General* * * * Now know ye, that the United States of America * * * have given and granted, and by these presents do give and grant unto the said James H. Ruttle and to his heirs *the said tract above described.*"

All of the other patents convey the lands in the same manner, by reference to the "official plat of the survey of said land returned to the General Land Office by the Surveyor-General."

In the above manner all of the lots are described and conveyed by the number of the lots, and by reference to the official plat of the survey of said lands returned to the General Land Office by the Surveyor-General.

A copy of the plat to which reference is made is Exhibit A appearing in the Record following page 14.

In no other manner are the lots described or identified by the patents than as they appear on this plat.

It will be observed that the plat shows that all the lots extend to and are bounded by Cedar Island Lake.

This lake is as distinctly a boundary of the lots, and made so by the plat, as are any of the lines of the section, or as are any of the subdivision lines of the section made a boundary of the lots.

Cedar Island Lake in fact exists opposite the lots. The meander line of the lake appears on the plat to coincide with the shore of the lake.

The plat represents that such meander line is at the shore of the lake.

In fact the lake is not as large as it is represented to be upon the plat, and therefore the lots, if bounded upon the lake, contain a greater quantity of land than they are described as containing in the patents.

There is no dispute of the title of the complainants to the lots as they are described in the patents.
(R. pp. 103, 104.)

The point in controversy is this, viz.: Do the complainants, under the descriptions in those patents, own the lands to the shore of the lake, or do they own only to a line to be located by reference to the field notes of the survey of Henry S. Howe, Deputy United States Surveyor, which field notes purport to locate a meander line of the lake,—the land between such meander line and the lake being claimed by the defendants as unsurveyed land of the United States.

The claim of the defendants is that no survey was made at all of the township by Henry S. Howe other than a survey of

the exterior lines of the township, and that the field notes of the survey, including the field notes of the meander lines, are false and fictitious.

(See Defendants' Answer, R. p. 37.)

(See Instructions to Defendant Croswell, R. p. 57.)

It is an admitted fact that *there is no evidence upon the ground* that an actual survey was made of the township by Henry S. Howe, from whose field notes the plat of the township was made, beyond running and marking the exterior boundary lines of the township, and that there is no evidence that section lines were ever run by him along or across said township, or that section or corner posts, or quarter posts were ever located or set by him, except a corner post at the north west corner of Section 36, and a quarter post in the western line of Section 36, and that there is no evidence that witness trees were ever blazed or marked by him, and that there is no evidence that any meander line of said lake was ever surveyed by said Howe, or any meander posts, placed by him about said lake, except one where the north line of the township encounters said lake.

(R. pp. 101, 102.)

It is further admitted, "that at divers times from a time soon after the survey was purported to have been made down to the present, competent woodsmen have made examination of the lands in said township, and since the winter of 1893 and 1894, various surveys thereof have been made by competent surveyors, but no monument, section corner, or quarter post, meander monuments, or any blazed lines or trees have ever been found except on the boundary lines of the township, and on the western line of section thirty-six, and at the north west corner thereof; that none of the posts, monuments, lines or witness trees specified in the field notes of Howe have ever been discovered, except as above stated, and that at many

places where they purport to have been established by him, said points are in lakes, then and now deep and permanent, and where the water is upwards of thirty feet in depth."

(R. p. 102.)

It is further admitted that a contract was made by and between the United States and Henry S. Howe, as Deputy Surveyor, dated April 26th, 1876, for the survey of all of the lands in said township fifty-seven, north of Range seventeen west, and that Howe made and filed field notes of a survey of said township, and a plat of the township was made therefrom which was approved by the Surveyor-General of the United States on August 7th, 1876; that said survey and plat of said township were submitted to the Commissioner of the General Land Office of the United States for his approval. That prior to the approval thereof complaint was duly made and filed in the department of the said United States General Land Office questioning the accuracy and good faith of said survey, and requesting that the said department of the General Land Office examine into the same and suspend approval of the said plat pending such examination; and that on the 11th day of June, 1879, the Commissioner of said United States General Land Office denied this application, and thereupon said plat was approved and filed and recorded in the office of the Surveyor-General, and became, and ever since and now is the official Government plat of said township.

(See Bill of Complaint, R. p. 3, and Defendants' Answer, R. p. 37, and R. p. 101.)

It is further admitted, "that prior to the commencement of this suit, the United States had patented, according to the government plat of the Howe survey thereof,—which is the only government plat of said township—all the fractional government lots in said township reported in the field notes returned by said Howe; *and all other lands in said township*,

outside of the meander line of Cedar Island Lake, shown by the field notes and plat of said Howe survey, had then been patented by the government."

(R. p. 103.)

Whatever defects may exist in the plat of the township, and whatever may be the cause of the defects, the Government has made the plat its own, and has issued patents intending to convey the entire of the lands in the township, according to the descriptions of the plat.

There can be no question in the case that it was the purpose and intent of the patents, under which the complainants derived their title, to convey all the lands to the shore of the lake.

POINT I.

The reference in the patents to the plat makes the plat as much a part of the patent as it would be had the plat been incorporated into and made, in fact, a part of the patent itself.

By the plat designating the lots as bounded by the lake, showing the lake to be the boundary of the lots, the effect to be given to the patent is the same as it would be *if the description of the lots in the patent had in express language said that the lots extend to and are bounded by the shore of the lake.* The lake is thus made a designated natural object constituting a boundary of the lots. It is a boundary monument of the lots.

Lincoln vs. Wilder, 29 Me., 169 at 179.
Erskine vs. Moulton, 66 Me., 276 at 280, 281.
Davis vs. Rainsford, 17 Mass., 207 at 211.
Whitman vs. Boston & Maine R. R. Co., 3 Allen, 133 at 139.
Boston Water Power Co. vs. Boston, 127 Mass., 374 at 376.
Morgan vs. Moore, 3 Gray, 319 at 321, 322.

Murdock vs. Chapman, 9 Gray, 156 at 158.
Rodgers vs. Parker, 9 Gray, 445 at 446, 447.
Fox vs. Union Sugar Refinery, 109 Mass., 292 at 296.
Parker vs. Bennett, 11 Allen, 388 at 393.
Masterson vs. Monroe, 105 Cal., 431.
Cragin vs. Powell, 128 U. S., 691 at 696.

In Lincoln vs. Wilder, 29 Me., 169, at page 179, the Court say: "Where land is conveyed according to a plan to which reference is made in the conveyance, it becomes a part of it, as much so as if it were incorporated in the conveyance. This is a well-established rule of construction. The demandant says in his deed, 'said premises being the lot numbered 52 on the plan, etc.,' he makes the plan a part of his deed. The plan bounds the lot on the west by the river, and is to be viewed in the same manner as a deed bounding a grant by a river."

In Erskine vs. Moulton, 66 Me., 276, a parcel of land is conveyed by description which carries the land to the low water mark of the stream. After the description the deed referred to the plan in the following words: "For a more full description, reference is made to a plan made by Asbury Young, November, 1865, (p. 277.)" By the plan the lands were *not* extended to low water mark of the stream, and the plan was held to govern. (Pp. 280-281.)

In Davis vs. Rainsford, 17 Mass., 207, the Court say (p. 211): "When lines are laid down on a map or plan, and are referred to in a deed, the courses, distances and other particulars appearing on such plan, are to be as much regarded as the true description of the land conveyed, as they would be if expressly recited in the deed. This is a familiar rule of construction in all those cases wherein no

other description is given in the title-deed, than the number of the lot on a surveyor's plan of a township, or other large tract of land."

In Whitman vs. Boston & Maine R. R. Co., 3 Allen, 133, the Court say (p. 139) : "On looking at the terms of this grant, it appears that the land conveyed was described as a lot on the canal, and was bounded southwesterly thereby, 'being canal lot number two as laid down on a plan' to which reference is made. Taking this description in connection with the plan, it is clear that the premises conveyed were bounded by the canal, and did not extend beyond it. If there were any doubt of this on the language of the grant, it is manifest from an inspection of the plan, which is to be deemed a part of the description, that the intent was to convey a lot bordering on the line of the canal, and to exclude any land comprehended within the limits of the canal itself."

In Boston Water Power Company vs. Boston, 127 Mass., 374, at page 376, the Court say : "The plan made use of at that sale is referred to in the deeds to the purchasers, and is described as recorded with the Suffolk deeds. It must be considered as making a part of the contract in each case, so far as is necessary to aid in the identification of the lots, and the description of the rights intended to be conveyed. All the particulars appearing on the plan and applicable to these lots are to be regarded as if they had been fully set forth in the deeds."

In Morgan vs. Moore, 3 Gray, 319, at pages 321, 322, the Court say : "Now, it is a well settled rule of construction, that where a plan is referred to in a deed, as containing a description of an estate, the courses, distances, and other particulars, appearing upon the plan, are to be as much regarded, in ascertaining the true description of the estate, and the

intent of the parties in making it, as if they had been expressly recited and enumerated in the deed."

In Murdock vs. Chapman, 9 Gray, 156, land was conveyed which was described in the deed by metes and bounds, and which referred to a plat, and described the lands by the plan as being lots 3, 4, 5 and 6 on said plan. The description by metes and bounds would not include lot number 5. The reference to the plan was held to control the description.

The Court say (p. 158): "By the well settled rule of construction in this commonwealth, when a plan is referred to in a deed, as a part of the description, all the particulars appearing on such plan are to be regarded as if they had been fully set forth in the deed."

In Fox vs. Union Sugar Refinery, 109 Mass., 292, the Court say (p. 296): "Where a plan is referred to in a deed, as containing a description of an estate, the courses, distances and other particulars, appearing upon the plan, are to be as much regarded in ascertaining the true description of the estate, and the intent of the parties in making it, as if they had been expressly recited and enumerated in the deed."

In Parker vs. Bennett, 11 Allen, 388, the Court say (p. 393): "When a plan is referred to as containing a description of an estate, what appears upon the plan is to be as much regarded in ascertaining the true description of the estate, and the intent of the parties in making it as if it was recited in the deed."

In Cragin vs. Powell, 128 U. S., 691, the Court had under consideration the boundaries of land which had been conveyed by patent, by reference to a plat of the survey filed in the United States Land Office for the District, by which plat a call of the description was a bayou.

The Court say (p. 696) : "It is a well settled principle that when lands are granted according to an official plat or survey of such lands, the plat itself, with all its notes, lines, descriptions *and landmarks*, becomes as much a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, *as if such descriptive features were written out upon the face of the deed or the grant itself.*"

In the patents by which these lots in question are conveyed by the United States *there is no description of the lands other than by reference to the plat.*

Under the above authorities, the description by the plat is to have the same effect *as though the language of the patent in terms stated that the lake is a boundary of the lots.*

POINT II.

The patents, by reference to the plat, having described the lands as extending to and bounded by the lake, conveyed all the land within the descriptions, and the United States *is estopped to deny that the lots extend to and are bounded by the lake.*

Thomas vs. Poole, 7 Gray, 83 at 84.
Parker vs. Smith, 17 Mass., 411 at 415.
O'Linda vs. Lothrop, 21 Pick., 292 at 296, 297.
Rodgers vs. Parker, 9 Gray, 445 at 446, 447.
Fox vs. Union Sugar Refinery, 109 Mass., 292 at 295, 296.
Farnsworth vs. Taylor, 9 Gray, 162 at 166.
Stetson vs. Dow, 16 Gray, 372 at 373.
Lunt vs. Holland, 14 Mass., 149 at 150.

In Thomas vs. Poole, 7 Gray, 83, the Court say (p. 84) : "The leading case on this subject, *Parker vs. Smith*, 17 Mass., 413, settled the general principle so often since recog-

nized, that if land be conveyed as bounded upon a way or street, this is not merely a description, but an implied covenant that there is such a way, and the grantor and his heirs are estopped to deny such a way as existing. So also a boundary on a passage way two rods wide, which is to be laid out between the premises and land of A, 'estops the grantor and those claiming under him to deny the existence of the passage way.'"

In Rodgers vs. Parker, 9 Gray, 445 at 446, the Court say: "The sale to the defendant was made by one having the entire estate, and was a sale by public auction of house lots laid out and numbered on a plan then exhibited; said lots being bounded by Hancock Avenue which was also delineated on the plan, which plan was afterwards recorded in the office of registry of deeds. In this state of the facts, the grantor and those who succeed to his title to the remaining land, are estopped from denying that there is such a way."

In Faresworth vs. Taylor, 9 Gray, 162, the Court say (p. 166): "The position taken by the defendants, that where land is conveyed which is situate on a street or way, and reference is made in the deed of conveyance to a plan on which said street is delineated, the plan exhibited at the sale, and subsequently recorded by the grantor in the registry of deeds, is made a part of the deed, and estops the grantor and those claiming under him to deny the existence of the street as delineated on the plan, is well maintained by authority and sound in principle."

In Stetson vs. Dow, 16 Gray, 372, the Court say (p. 373): "It is now well settled that when a grantor conveys land bounding on a street or way, he and his heirs are estopped to deny the existence of such street or way; and the grantee acquires by the deed a perpetual easement or right of pass-

age on, upon and over it, from the full enjoyment of which he can never afterwards be excluded. And this is a right, not only coextensive with the land conveyed, but for the entire distance of the way, as it is then actually laid out or clearly indicated."

Estoppel applies against the United States as it applies under like circumstances against a private person. *As under the above authorities a private person conveying the lands by reference to such plat would be estopped to deny that the land extended to and was bounded by the lake, so are the United States estopped to deny the same facts.*

Lindsey vs. Hawes, 2 Black, 554 at 560.
Woodruff vs. Trapnall, 10 Howard, 190 at 207.
Branson vs. Wirth, 17 Wall., 32 at 42.
Clark vs. United States, 95 U. S., 539 at 544.
Pengra vs. Munz, 29 Fed., 830 at 836.
Hough vs. Buchanan, 27 Fed., 328 at 331.
State of Indiana vs. Milk, 11 Fed., 389, 396, 397.
United States vs. Military Road Co., 41 Fed., 493 at 501.
United States vs. McLaughlin, 30 Fed., 147 at 161, 162.
Commonwealth vs. Philadelphia, &c., Turnpike Co., 153 Pa. St., 47.
State vs. Janesville Water Power Co., 92 Wis., 496.
State of Michigan vs. F. & P. M. R. R. Co., 89 Mich., 481.
State of Michigan vs. Jackson, L. & S. R. Co., 69 Fed., 116 at 120, 121, 123, (Court of Appeals.)
Commonwealth vs. Heirs of Andre, 3 Pick., 224 at 225, 226.
Menard's Heirs vs. Massey, 8 How., 293 at 313, 314.

In Lindsey vs. Hawes, 2 Black, 554, government land was surveyed in the year 1833 by Bennett, the Government Surveyor, whose survey was duly filed in the proper office. In 1839, Thomas Lindsey made application to purchase the land under that survey, claiming a pre-emption right by reason of cultivation and residence, and received from the Receiver

and Register proper certificates stating the receipt of the purchase money, and that, on its presentation to the Commissioner of the General Land Office, he would be entitled to a patent.

About five years after Lindsey's entry, upon a suggestion made to the Commissioner of the General Land Office that there was error in Bennett's survey, the commissioner ordered a new survey to be made of the same lands. The new survey conflicted with the Bennett survey, and under the new survey a patent was issued to David Hawes which covered a portion of the land which had been sold to Thomas Lindsey. The suit was brought by the heirs of Lindsey to quiet their title to the portion of the land claimed by Hawes under his patent.

The opinion of the court sustaining the suit was delivered by Mr. Justice Miller, who states as follows (p. 560): "It is to be remembered that the original survey of Bennett, was the survey of the Government; that it was made in 1833; that the maps, plats, certificates, and field notes were all filed in the proper office; the survey approved, and that for eleven years, the Government had acted upon and recognized it as valid and correct, and above all had sold the land to Lindsay by this its own survey, received the purchase money and given him a patent certificate five years before any suggestion was made of this error. The money thus received by the Government has never been returned, nor do we think it would vary the rights of the parties if it had been actually tendered to him or his heirs. We are of opinion, under these circumstances, that so far as the location of the lines of that quarter section affect the question of the precise locality of Lindsay's residence, as bearing on his right to enter that fraction as a pre-emption, *the Government was bound by the original survey of Bennett.*"

In Woodruff vs. Trapnall, 10 Howard, 190, the Legislature of Arkansas had chartered a banking corporation in which the State was the sole stockholder. The charter provided that the bills and notes of said institution should be received in all payments of debts due to the State. Afterwards a law was passed repealing that clause of the charter.

The question in the case was of the obligation of the State to receive the notes of the Bank after the repealing act had been passed.

In deciding the case, the Court say (p. 207):

"A State can no more impair by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals. We naturally look to the action of a sovereign State to be characterized by a more scrupulous regaed to justice, and a higher morality, than belong to the ordinary transactions of individuals. The obligation of the State of Arkansas to receive the notes of the Bank, in payment of its debts, is much stronger than in the above case of individnal guarantee."

In Clark vs. United States, 95 U. S., 539, Clark, as the owner of a vessel, in 1865 made an agreement with an officer in the Quartermaster's Department of the United States for the use of the vessel by the Quartermaster's Department, at the price of $150 a day. The vessel was taken possession of by the Quartermaster's Department, and while in such use was wrecked. The owner brought suit in the Court of Claims to recover for the value of the vessel, and for her use before the wreck occurred.

Defense was made to the claim on the ground that the vessel was previously owned by and in the military possession of the Confederate Government, and that the complainant acquired his title to her about the year 1863, by taking her in

part payment of a claim he held for supplies furnished by him to the Confederate Quartermaster's Department.

In overruling this defense, Mr. Justice Bradley, delivering the opinion of the Court, said (pp. 543, 544):

"The other objection relied on by the government in this case is, that the claimant had no valid title to the steamer as against the United States, having obtained her from the Confederate Government, in 1863, in payment for supplies furnished to the Quartermaster's Department of that government. This objection cannot be sustained. When the contract was made with the claimant, the vessel was in Mexican waters, and not subject to the jurisdiction of the United States. The claimant was applied to for its use. It was agreed that he should be compensated. No question was made about his title, and it is not suggested that he was guilty of any concealment or suppression of the truth in regard to it. Under these circumstances, it would be bad faith on the part of the government, after getting possession of the steamer and getting it within its jurisdiction, under pretense of hiring it of the claimant, to set up that he had no title to it."

In Pengra vs. Munz, 29 Fed., 830, the plaintiff claimed title to land under a grant of the United States to the State of Oregon of land conveyed in the construction of a military road. The grant had been conveyed by the State to the Oregon Central Military Road Company, which by the construction of the road had become entitled to the land under the grant, and had conveyed the land to the plaintiff. The defendant claimed title to the land under the Swamp Land Grant of 1850, which had been extended to the State of Oregon and under which the lands had been selected by the State as swamp lands, the selection having been made after the action had been taken under the grant for the purpose of the construction of the military road.

In deciding the case, the Court say (p. 836):

"The State was the grantee in both these grants. It accepted the land as part of the wagon-road grant, or allowed its grantee or agent to do so. At least there is no evidence that it ever selected this section under the swamp-land grant, and presented it for certification as part thereof. And while this may have been done, it is morally certain that it was not done until after the premises were certified to the grantee of the state under the wagon-road grant, nor until the grant had lapsed, for want of selection, within the time prescribed. The non-action of the state in this matter probably arose from the fact that it was thought best that the land should go to the construction of the wagon-road which was then regarded as a meritorious enterprise. For long after this swamp-land grant was made no interest was taken in it, nor was it generally understood that there was any considerable quantity of land in the state to which it was at all applicable. For 10 years the state took no steps to secure any land under it, preferring, as it appears, to make its selections under the grants for the benefit of roads and schools. The fact that some portions of these selections were damp enough to be called swamp was no objection to them, but often a recommendation; and in my judgment, it would have been well if that policy had been continued. But, be that as it may, in the meantime this land was formally selected and certified to the state as wagon-road land, with its acquiescence, if not active concurrence, and *it is now estopped*, as against the plaintiff, to deny that the premises are included in such grant, or to assert that it acquired them under the swamp-land grant. And if the state is so estopped, so is its grantee, the defendant."

In State of Indiana vs. Milk, 11 Fed., 389, the State sought to recover possession of land. The defendant set up acts by which he claimed the State of Indiana was estopped from recovering the land.

In deciding the case against the State, Judge Gresham uses this language (p. 397):

"Resolute good faith should characterize the conduct of states in their dealings with individuals, and there is no reason, in morals or law that will exempt them from doctrine of estoppel."

In United States vs. Dalles Military Road Co., 41 Fed. 493, suit was brought by the United States under Act of Congress, March 2nd, 1889, to procure a decree of forfeiture of lands granted to the State of Oregon, to aid in the construction of a military road, on the ground that the terms of the grant had not been complied with.

In dismissing the bill, Judge Sawyer uses this language (p. 501): "Whatever is inequitable, as between man and man, in their dealings with each other, should, also be deemed inequitable, as between the United States and those with whom they condescend to deal, under like circumstances; and, I take it, that the same decree is proper in this case, that would have been proper, had a private party been the grantor, and had he by both his positive affirmative action, and his non-action, for so long a time, given purchasers from his grantee so good reason to believe, that he was fully satisfied with the performance of the conditions of the grant."

In United States vs. McLaughlin, 30 Fed., 147, suit was brought by the United States against the Central Pacific Railroad Company, patentee, and its various grantees, to vacate certain patents as having been improperly issued by mistake.

In deciding the case against the United States, Judge Sawyer uses this language (pp. 161, 162):

"Do the principles of equity jurisprudence require, that these patents, in either case, under the peculiar circumstances

surrounding them, should be decreed void and vacated? It does not appear so to us. The interests of all *these* pre-emptioners and purchasers from the government, as well as of the parties holding under the railroad grants, and the interests of public justice, generally require that the practical location of the vague, uncertain, impracticable eastern exterior boundary of the Moquelamos grant of 1855, acted upon by all departments of the government, by the public, and even by the claimant himself, for nearly a quarter of a century, should not now be disturbed—*that the government should be now estopped from alleging that it is, or should be, located elsewhere.* That the law of estoppel, in a proper case, applied to the government, see *Clark vs. U. S., 95; U. S. 539, 544; Branson & Wirth*, 17 Wall, 42; *State vs. Milk*, 11 Fed., Rep., 389, 397, and cases cited."

In Commonwealth vs. Philadelphia &c. Turnpike Co., 153 Pa. St., 47, proceedings were taken in behalf of the State, under *quo warranto* proceedings, to prevent the defendant company from using its road.

In deciding the case against the State, Chief Justice Paxson says: "In England, from whence we derived the great body of common law, and most of our principles in equity, it is well settled that, while time will not run against the crown, yet time, together with other elements, may make up a species of fraud, *and estop even sovereignty from exercising its legal rights.*"

In State of Michigan vs. The Flint & Pere Marquette R. R. Co., 89 Mich., 481, suit was brought to establish the claim of the State to lands which were claimed by the railroad company.

In deciding the case against the State, the Court employs the following language (p. 487): "I deem it necessary to

discuss and determine only the question of estoppel, raised in this case ; for, if the complainant is estopped to now set up title in itself to the lands in controversy, the other questions become unimportant.

That the State, as well as individuals, may be estopped by its acts, conduct, silence, and acquiescence, is established by a line of well-adjudicated cases."

In Commonwealth vs. Heirs of Andre, 3 Pick., 224, the Commonwealth had granted a tract of land to Andre, his heirs, and assigns, with warranty. Andre was at that time resident in Boston, but was a subject of the King of France. After the death of Andre, the Attorney General of the State, in pursuance of a resolution of the legislature, brought suit to recover possession of the land from the heirs of Andre, who were also subjects of the King of France, on the ground that the land had escheated to the Commonwealth, by reason of the alienage of Andre and his heirs.

The Court held, Chief Justice Parker delivering the opinion, that the Commonwealth having conveyed the land to the persons defending the suit, as heirs of Andre, to whom, and to his heirs, the grant was made, was estopped against setting up the alienage of those persons.

In Menard's Heirs vs. Massey, 8 Howard, 293, at 313, 314, a grant of land had been made in 1799 by the Lieutenant Governor of the Spanish Province of Louisiana, which grant had been confirmed by act of congress.

To define the location of the grant a survey was made by direction of the Surveyor General under the authority of the act of congress. The Court, by Mr. Justice Catron, in stating the effect of this survey, as between the United States and the claimants of the lands, says (p. 314): "When it was made, and the field notes returned to the surveyor-general's office,

and the description and plat made out in form and approved by the surveyor-general, it was conclusive evidence, as against the United States, that the land granted by the confirmation of congress was the same described and bounded by the survey, unless an appeal was taken by either party, or an opposing claimant, to the commissioner of the general land office. This consideration depends on the fact that the claimant and the United States were parties to the selection of the land; for, as they agreed to the survey, *they are mutually bound and respectively estopped by it.*"

It is submitted that under the above authorities, the United States, in a suit brought in their behalf, would be estopped to deny that Cedar Island Lake was the boundary of the lots conveyed by the patents.

POINT III.

The descriptions of these fractional lots contained in the patents, being lots as they appear by their numbers, and by their bounderies designated on the plat, and the lake itself being made the boundary, the boundary by the lake thus made governs the description, notwithstanding no courses, distances, nor computed contents correspond with such boundary.

This is clearly decided by the following cases, even though it may be found that no survey of the lots had in fact been made.

Newsome vs. Pryor's Lessee, 7 Wheat., 7 at 9, 10.
McIver's Lessee vs. Walker, 9 Cranch., 173, 179.
Preston's Heirs vs. Bowmar, 6 Wheat, 580, 582.
Higueras vs. U. S., 5 Wall., 827 at 835, 836.
Morrow vs. Whitney, 95 U. S., 551 at 555.
County of St. Clair vs. Lovingston, 23 Wall., 46 at 62, 63.
Murdock vs. Chapman, 9 Gray, 156, 157.

Bishop vs. Morgan, 82 Ill., 351 at 353.
Shufeldt vs. Spaulding, 37 Wis., 662 at 668.
Gove vs. White, 20 Wis., 425, 432.
Graves vs. Fisher, 5 Me., 69.
Horne vs. Smith, 159 U. S., 40.
Niles vs. Cedar Point Club, 175 U. S., 300.

In Newsom vs. Pryors's Lessee, 7 Wheat., 9. 10, the facts are in all respects similar to the case which is before the court, if in fact no survey was made by Howe. The lands were conveyed by patent, described by reference to a survey and plat, when in fact no survey had been made, other than to mark a beginning corner. By the plat the boundary of the lands extended to the crossing of a river. By the courses and distances given the land would fall short of such boundary by a distance of 328 (poles) rods, a distance of a mile and eight rods.

The opinion of the Court was delivered by Chief Justice Marshall, and it was held that it must be considered as if the survey had actually been made, that the plan controlled the description, and the land was conveyed to the opposite side of the river referred to.

The case is decided thus: (the italics are ours.) "The plaintiffs in the court below claimed under the elder patent, to the validity of which there was no objection. Of consequence the only question in the cause was, whether the lines of their grant comprehended the land in contest. The grant was made for 5,000 acres of land, 'lying on both sides of the two main forks of Duck River, beginning, &c., and running thence west, 894 poles, to a white-oak tree; south, 894 poles, to a stake crossing the river; thence east, 894 poles, to a stake; thence north, 894 poles, to the beginning, crossing the south fork.' "

"It is apparent that a survey was not made in fact, but that after marking a beginning corner, the surveyor made out and returned a plat, which he supposed would comprehend the land intended to be acquired. It is now too late to question the validity of grants made on such plats and certificates of survey. From the extraordinary circumstances of the country, they were frequent, and, in consequence of these circumstances, have received the sanction of courts. An immense number of titles believed to be perfectly secure, depend upon the maintenance of such grants. The extent of the mischief which would result from unsettling the principle, cannot be perceived ; and is certainly too great now to be encountered. The patent, therefore, must be considered, as if the survey had been actually made."

"In consequence of returning plats where no actual surveys had been made, and where the country had been very imperfectly explored, the description contained in the patent often varies materially from the actual appearances of the land intended to be acquired. Natural objects are called for in places where they are not to be found ; and the same objects are found where the surveyor did not suppose them to be. In a country of a tolerably regular surface, no considerable inconvenience will result from this circumstance. The course and distance of the patent will satisfy the person claiming under it, and seldom interfere with the rights of others. But in a country where we find considerable watercourses and mountains there must be more difficulty. The surveyor calls for some known object, but totally miscalculates its courses, distances, or both, from some given point which he has made the beginning of his survey ; and there is a variance in the different calls of his survey, and of the patent founded on it. As in this case, the second line is run south 894 poles, to a stake, crossing the river. This distance will not reach the river ; *and must be continued to 1,222 poles, to cross the river.*"

"The distance must be disregarded, and this line so extended as to cross the river, or the distance must control the call for crossing the river."

"These difficulties have occurred frequently, and must be expected to occur frequently where grants are made without an actual survey. Some general rule of construction must be adopted, or the conflicting claims of individuals must remain forever uncertain."

"The Courts of Tennessee, and all other courts by whom causes of this description have been decided, have adopted the same principle, and have adhered to it. *It is, that the most material and most certain calls shall control those which are less material, and less certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance. These decisions are founded on two considerations. Generally speaking it is the particular intention of the purchaser to acquire the land lying on the stream called for, as being more valuable than other land; and in every case where a natural object is mentioned, it designates the land surveyed had there been an actual survey, much more certainly than course and distance can designate it.* In this case, for example, the Surveyor says that he has run south 894 poles, to a stake crossing the river. Now, it is much more probable that he should err in the distance, than in the fact of crossing the river. The conclusion, therefore, had an actual survey been made, would be, that the line did cross the river."

"The general effect of this principle undoubtedly is, that the purchaser acquires more land than is expressed in his grant, and more than he has paid for. Where this has been thought an object worthy of legislative attention, provision has been made for it. Courts cannot now shake a principle so long settled, and so generally acknowledged."

"In this case, the counsel for the defendant in the court below seems to have admitted the rule, but to deny its application to this case. He founds his application to the Court on a supposed distinction between a call to stop at a river, and a call to cross a river." * * * * "We can perceive no sound reason for the distinction between a call for a river at the end of a line, and for a river in the course of a line. There is as much reason in the one case for supposing the Surveyor intended the line should cross the river, or, in case of actual survey, for supposing he did cross the river, as in the other, for supposing an intention to stop at the river, or an actual termination of the line at the river."

"Whether the motives for the call were that the acquisition of the land on the river was an object with the purchaser, or that the call for the river conduced more certainly to the designation of the land intended to be acquired, the motives for considering it as the controlling call in the patent, to which distance must be subordinate, seem to be precisely the same whether the call be to cross the river, or to terminate at it."

The above case emphasizes the fact that where a stream is made a boundary, it is the particular intention of the purchaser to acquire the land lying on the stream called for by the boundary, as being more valuable than other land.

The evidence is clear and undisputed in the case at bar that the complainants purchased the land in controversy with particular reference to the fact that it bordered upon the lake.

They purchased the land for the timber and with reference to the particular facilities which that lake furnished for the operations of lumbering, for storage, and transportation of he timber.
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Mr. Simon J. Murphy, who purchased the lands, and conveyed an undivided one-sixth to each of the other complainants, Robinson, Dorr and Flinn. testifies as follows (R. p. 107):

"I purchased these lands for their pine timber, and originally took the title in my own name, intending to lumber the timber in the two towns above described into Ely Lake, (Cedar Island Lake) in the usual manner of lumbering by water. At that time there were no railroads contemplated in that locality, and I bought the lands around Ely Lake to facilitate the lumbering operations of this surrounding tract of pine timber, in the usual course of business, without any knowledge of any special excess in any of the descriptions. * * * *When I purchased these lands around Ely Lake I relied upon the plats and government descriptions, that they were bounded by the lake.* * * * *I took the report and examination of my woodsmen, relying on the government plat that the lands were bounded by the lake.* I made no examination of the lands personally. * * * The object and basis of said purchase of the lands bordering on Ely Lake was their value for the timber which stood upon them, *and the riparian rights which said lands bordering on Ely Lake possessed for the purpose of flooding said lake for a reservoir, and holding ground in case of fire, and banking ground for the lumbering of said timber.*"

Mr. Elisha H. Flinn testifies (R. p. 105):

"We purchased those lands for the pine timber, *and also for the lake frontage*, we have a large amount of timber just north in township 58—17, and at that time considered that as the only outlet for the timber. The purchase of the land in Section 11—57—17, was largely for the outlet, as we supposed, of the lake; also, the timber on land in the western part of the lake in 9 was purchased to control that portion in case we should dam the lake as a reservoir."

Mr. George Robinson testifies (R. p. 114):

"The features presented to us in making these purchases were, 1st. The amount of timber, of which we secured in

this purchase some 43,000,000 feet, lying tributary to Cedar Island Lake. 2nd. *The value of the boundaries on that lake to us in lumbering the timber*, as at that time it appeared that this was the only outlet for this whole tract of timber."

In the case of County of St. Clair vs. Lovingston, 23 Wall., 46, the above case of Newsom vs. Pryor's Lessee was cited, and its statement of law was adopted, the Court using this language (p. 62): "It is a universal rule that course and distance yield to natural and ascertained objects. A call for a natural object, as a river, a spring, or even a marked line, will control both course and distance. Artificial and natural objects called for, have the same effect." * * * (p. 63), "*Where a survey or patent show a river to be one of the boundaries of the tract, it is a legal deduction that there is no vacant land left for appropriation between the river and the river boundary of such tract.*"

In McIver's Lessee vs. Walker, 9 Cranch, 173, 179, land was granted by patent from the State of North Carolina, in which courses and distances were given, *and a plat was annexed.* Excepting the location of one corner, "*no survey of the land was ever made.*" By the plat a creek called Crow Creek ran through the land. The lines run *by the courses and distances* called for in the patent would not include Crow Creek.

Chief Justice Marshall, delivering the opinion of the Court, says (pp. 178, 179): "It is undoubtedly the practice of surveyors, and the practice was proved in this cause, to express in their plats and certificates of survey, the courses which are designated by the needle; and if nothing exists to control the call for course and distance, the land must be bounded by the courses and distances of the patent, according to the magnetic meridian. But it is a general principle

that the course and distance must yield to natural objects called for in the patent. All lands are supposed to be actually surveyed, and the intention of the grant is to convey the land according to that actual survey; consequently, if marked trees and marked corners be found conformably to the calls of the patent, *or if water courses be called for in the patent, or mountains or any other natural objects, distances must be lengthened or shortened, and courses varied so as to conform to those objects.* The reason of the rule is that it is the intention of the grant to convey the land actually surveyed, and mistakes in courses or distances, are more probable and more frequent, than in marked trees, mountains, rivers, or other natural objects capable of being clearly designated and accurately described. Had the survey in this case been actually made, and the lines had called to cross Crow Creek, the courses and distances might have been precisely what they are, it might have been impracticable to find corner or other marked trees, and yet the land must have been so surveyed as to include Crow Creek. The call in the lines of the patent, to cross Crow Creek, would be one to which course and distance must necessarily yield. This material call is omitted, and from its omission arises the great difficulty of the cause."

"That the land should not be described as lying on both sides of Crow Creek, nor the lines call for crossing that creek, are such extraordinary omissions as to create considerable doubt with the Court in deciding whether there is any other description given in the patent, of sufficient strength to control the call for course and distance."

"The majority of the Court is of opinion that there is such a description. The patent closes its description of the land granted by a reference to the plat, which is annexed."

"The laws of the State require this annexation. In this plat, thus annexed to the patent, and thus referred to as

describing the land granted, Crow Creek is laid down as passing through the tract. Every person having knowledge of the grant, would also have knowledge of the plat, and would, by that plat, be instructed that the lands lay on both sides of the creek ; there would be nothing to lead to a different conclusion, but a difference of about five degrees in the course, should he run out the full chain of surveys, in order to find the beginning of No. 12 ; and he would know that such an error in the course would be corrected by such a great natural object as a creek laid down by the surveyor in the middle of his plat."

In Preston's Heirs vs. Bowmar, 6 Wheat., 580, the Court, by Justice Story, uses this language (p. 582): "It may be laid down as an universal rule that course and distance yield *to natural and ascertained objects*. But where these are wanting, and the course and distance cannot be reconciled, there is no universal rule that obliges us to prefer the one or the other."

In Higueras vs. United States, 5 Wall., 827, Mr. Justice Clifford, delivering the opinion of the Court, says (pp. 835, 836,): "But ordinarily surveys are so loosely made, and so liable to be inaccurate, especially when made in rough or uneven land or forests, that the courses and distances given in the instrument are regarded as more or less uncertain, and always give place, in questions of doubt or discrepancy, to known monuments and boundaries referred to as indentifying the land. Such monuments may be either natural or artificial objects, such as rivers, streams, springs, stakes, marked trees, fences, or buildings."

In Morrow vs. Whitney, 95 U. S., 551, Mr. Justice Field, delivering the opinion of the Court, uses this language (p. 555): "Metes and bounds in the description of premises

control distances and quantities when there is any inconsistency between them. This is a familiar rule, and is founded upon the principle that those particulars are to be regarded in which error is least likely to occur."

In Bishop vs. Morgan, 82 Ill., 351, the Court say (p. 353): "Quantity in the description of land is never allowed to control courses, distances, monuments, or natural landmarks such as creeks, rivers, ponds, or lakes."

In Shufeldt vs. Spaulding, 37 Wis., 662, Justice Lyon, delivering the opinion of the Court (p. 668) uses the following language: "Were authorities necessary to sustain principles which, if not elementary, are yet well settled in law, the numerous cases cited by counsel for the defendants abundantly show that when a plat is referred to in a deed as a part of the description of lands conveyed, *such plat becomes an essential part of the description itself, and that courses, distances, quantities and measurements must yield to, and are controlled by, natural or fixed landmarks.*"

The cases of Horne vs. Smith, 159 U. S., 40, and Niles vs. Cedar Point Club, 175 U. S., 300, have been cited by the defendants, as being in conflict with the decisions in the foregoing citations.

It is submitted that they are, on the contrary, in entire harmony with them.

In Horne vs. Smith, 159 U. S., 40, the patent conveyed fractional Lot 7, of Section 23, and Lots 1 and 2 of Section 26, containing 170 acres, according to the official plat of the survey of said lands. The plat showed the sections were fractional, bordering on Indian River. On the plat a

meander line runs through the section from north to south, the Indian River being on the west thereof.

Along the course of this meander line, as shown on the plat, runs, *according to the testimony*, a bayou or savannah opening into Indian River, and west of this bayou, and between it and the main waters of the river, is a body of land extending the width or distance of a mile, or a mile and a quarter, and amounting to about 600 acres.

After stating that official surveys are not open to collateral attacks, and that a meander line is not a line of boundary, but one designed to point out the sinuosities of the bank of the stream, and as a means of ascertaining the quantity of lands in the fraction which is to be paid for by the purchaser, and that metes and bounds in the description of premises control distance and quantity, the Court, by Mr. Justice Brewer, says (p. 43): "But the question in this case is whether the boundary of these lots is the bayou, or the main body of the river. *That a water line runs along the course of the meander line cannot, of course, in the face of the plat and survey be questioned*, but that the meander line of the plat is the water line of the bayou rather than that of the main body of the river is evident from these facts."

Here is a distinct declaration that the land conveyed by the patent extends to the water line shown on the plat, and there appearing by the evidence to be two water lines, it became a question of identifying which of the two water lines are the lines indicated by the plat; the court points out two facts from the evidence by which it appeared that the water line of the bayou was the water line shown on the plat, and adds, at page 46, as follows: "So in the case before us, obviously the surveyors surveyed only this bayou, *and called that the river*. The plaintiff has no right to challenge the correctness of their action, or claim that the bayou was not Indian River, or a proper water line upon which to bound the lots."

It is the inevitable result of the decision, that if there had been no water line of the bayou, or savannah, between the meander line as located by course and distance and the main river, the main river would have been held to be the west boundary of the land conveyed by the patent, because the plat called for the water line as a boundary, and such boundary could not be questioned or controlled by distance or quantity.

In Niles vs. Cedar Point Club, 175 U. S., 300, the lands were conveyed as fractional parts of sections, according to the official plat of the survey.

The field notes and plat showed for the northerly boundary of the land a meander line, and beyond such line there was described, on the plat, territory designated on the plat as "Flag Marsh," and "impassable marsh and water." The north line of the land was also actually surveyed and marked as shown by the field notes. The plat and marginal field notes also showed that the southerly edge of the "flag marsh" or "impassable marsh and water" was surveyed, and that the lines of the fractional sections southerly of said marsh and water were indentical with the southerly edge of the marsh.

A copy of the plat appears in the report of the case in the Court of Appeals, 85 Fed., p. 47, by which it plainly appears that the boundary of the fraction was intended to be the south line of the marsh.

Justice Brewer, delivering the opinion of the Court, says (pp. 305, 306): "The meander line run by surveyor Rice along the northern borders of the tracts patented to Margaret Bailey may not have been strictly a line of boundary, *Railroad Company vs. Schurmeier*, 7 Wall., 272; *Hardin vs. Jordan*, 140 U. S., 371, 380; *Horne vs. Smith*, 159 U. S., 40; but it indicated that there was something which had stopped the survey, which limited the area of the land which the United States was proposing to convey, and left to subsequent

measurements the actual determination of the line of separation between the land conveyed and that which the government did not propose to convey.

Generally, these meandered lines are lines which course the banks of navigable streams or other navigable waters. Hence, it appears distinctly from the field notes and the plat that the surveyor, Rice, stopped his surveys at this "marsh" as he called it. These surveys were approved and a plat prepared, which was based upon the surveys and field notes, *and showed the limits of the tracts which were for sale.* The patents referring in terms to the survey and plat, clearly disclose that the Government was not intending to and did not convey any land which was a part of the marsh."

By the plat in the case which is now before the Court, *the meander line is fixed upon the shore of the lake, and the lake is delineated and named on the plat.*

The intention plainly expressed by the patent and plat is that the meander line and shore of the lake coincide, and that the lake itself is the boundary of the land conveyed.

In this manner the lake is made the boundary of the land within the decisions in *Horne vs. Smith*, and *Niles vs. Cedar Point Club, because the plat shows that the lake is intended as the boundary.*

POINT IV.

The defendants have made the contention in this case that a patent of unsurveyed lands conveys no title, and that, therefore, no title passed from the United States to the lands in controversy, because it was not, in fact, surveyed by Deputy Surveyor, Henry S. Howe, and cite to sustain this position the expression of the court in the case of Horne vs. Smith, 159 U. S., 40.

That case does not hold, as claimed by defendants' counsel, that land which is not surveyed cannot pass by patent.

In answer to the claim made in that case, that the land which was unsurveyed, lying between the bayou and the main river passed by the conveyance of the patent of the land which was surveyed up to the bayou, the Court say: "Although is was unsurveyed it does not follow that a patent for the surveyed tract adjoining carries with it the land which, perhaps, ought to have been, but which was not in fact, surveyed. The patent conveys only the land which is surveyed, and when it is clear from the plat and the surveys that the tract surveyed terminated at a particular body of water, the patent carries no land beyond it."

The court was speaking of the particular patent in that case, and, to the claim set up made answer that a patent conveying land which is surveyed does not carry with it, in the character of an appurtenance, land which is unsurveyed.

In addition, the cases above cited to the contrary of this position of the defendants (viz: *Newsom vs. Prior's Lessee*, 7 Wheat, and *McIver's Lessee vs. Walker*, 9 Cranch, 173) (in which patents conveyed lands not in fact surveyed) in the recent case of *Mitchell vs. Smale*, 140 U. S., 406, the patent conveyed the south west fractional quarter of fractional section 20, which the plat of the survey showed as bordering on and bounded by a lake. A strip or tongue of land extended beyond the meander line into the lake, which strip or tongue of land formed the subject of controversy. The quantity of land specified in the patent, which was dated March 1st, 1850, was 4.53 acres. In 1874, the Commissioner of the General Land Office caused the land outside of the meander line to be surveyed, and upon such survey a patent was issued for the land in controversy, according to such survey; (pages 411, 412.) It appears by the dissenting opinion of the court that the strip or tongue of land contained 25 acres (p. 415.)

The court held that the land in dispute was included in the first patent, which conveyed the fractional quarter of the section by the description of the plat as bordering upon and bounded by the lake, saying:

"In conclusion, our view of this part of the case is that the patent to DeWitt (the first patent) conveyed, and the plaintiff is entitled to, all of the fractional S W quarter of Section 20, from its northern boundary line extending southwardly to the actual water line of the lake, wherever that may be, with the riparian rights incident to such position."

The case of Railroad Co. vs. Schurmeier, 7 Wall., 272, is of like character upon this point. In that case the land was conveyed by patent, which was fractional, and appeared by the official plat to border upon the Mississippi River. The meander line upon the plat ran along the main line of the shore. Between that line and the main channel of the river was a parcel of land composed of a slough or bar, and beyond the slough or bar an island. "In the goverment survey no mention of or reference to this bar, or island, was in any way made in the field notes, plat or map." After the fraction had been patented, the space occupied by this bar and island was caused to be surveyed on the part of the government, and was platted and mapped, and was claimed under a land grant from the goverment.

It was held that these premises passed by the patent, on the ground that by the official plat upon which the patent was issued, the river and not the meander line was made the boundary. *From the evidence in the case, these premises had not in fact been surveyed or included in the survey upon which the patent issued; they were not included in the quantity of land specified in the patent, and did not appear by the field notes to have been included within the survey. They were in quantity more than five times the amount described in the patent.*

But the contention of the defendants is *that not any of the lands in said township 57 north, of range 17 west, were surveyed by Deputy Surveyor Howe.*

The claim is that only the exterior lines of the township were surveyed, and that the field notes of the survey of the sections and parts of sections were fictitious and false, and that the plat of the township was made upon such fictitious and false field notes.

(See Defendant's Answer, p. 37, paragraph II.)

If the contention of the defendant is valid, it would follow that the title to the entire of the lands in the township is in the United States, and also that the complainants got nothing under the patents under which they derived their title, *notwithstanding the defendants concede that the complainants have title to that portion of the lands described in the patents which is not included between the alleged meander line and the shore of the lake.* (See Defendant's Answer, pp. 37, 38, Paragraph III, and the Statement of Admitted Facts, p. 103, Paragraph 9,) where it is also admitted that the United States had, prior to the commencement of this suit, patented "all the fractional government lots in said township reported in the field notes returned by said Howe ; and all other lands in said township, outside of the meander line of Cedar Island Lake, shown by the field notes and plat of said Howe survey, *had then been patented by the government.*"

It would seem that there could be no serious contention that the title to the land in controversy did not pass by the patents, if those lands were in fact included within the descriptions contained in the patents, and it was the intention of the patents to convey such lands.

POINT V.

The patents having included the lands in controversy *within the descriptions of the lands conveyed*, the validity of the patents can not be questioned in this suit.

1st. If there was mistake or fraud in the issue of the patents, it can be corrected only by a suit brought by the United States, which shall set forth the facts which constitute the basis or ground for such correction.

The survey of the public lands is vested in the land department, and it is within the jurisdiction of that department *to determine when the lands have been properly surveyed, so that a patent may be issued for them.*

The action of the land department upon this subject is judicial, and is "unassailable, except by a direct proceeding for its correction or annulment."

Smelting Co. vs. Kent, 104 U. S., 636 at 640.
United States vs. Minor, 114 U. S., 233 at 241, 243.
Moffat vs. United States, 112 U. S., 24 at 30.
United States vs. Schurz, 102 U. S., 378 at 396.
United States vs. Stone, 2 Wall, 525 at 535.
Erhardt vs. Hogaboom, 115 U. S., 67.
Johnson vs. Towsley, 13 Wall., 72 at 83.
Noble vs. Union River Logging R. R. 147 U. S., 165 at 175.
Bishop of Nesqually vs. Gibbon, 158 U. S., 155 at 166, 167.

To assail these patents on the ground of fraud, or to correct them in respect to the lands in controversy, the suit would have to be instituted by the United States, since the controversy would be between them and the complainants, no other parties having obtained any claim to the lands from the United States.

United States vs. San Jacinto Tin Co., 125 U. S., 273.

The complainants can not bring suit against the United States in this court, or elsewhere, to establish the complainants' title to the lands.

They must rest upon the patents for their title until the United States see fit to attack the patents.

United States vs. Schurz, 102 U. S., 378 at 404.

The United States have not appeared in this suit, and the court had no jurisdiction to bring them into the case, and no decree which may be made will be of any effect against the United States.

The attack upon the validity of the patents by the defense in this suit is a collateral attack, and is not available to the defense.

2nd. In the suit instituted by the United States, to avoid or correct the patent on the ground of the alleged false character of the field notes and plat, the complainants would have the right to set up as their defence an estoppel against the United States, arising from the fact that the attention of the Land Department was called to the character of the survey, and had an opportunity to investigate and determine its validity, and after its attention had been so called, approved the survey and plat, thereby adjudging that they were properly made; that the plat had been acted upon to the extent that the entire of the lands in the township had been conveyed upon the basis of said field notes and plat, and that the titles thus conveyed had been dealt with through numerous and successive sales, and the complainants had obtained their title to the lands in controversy through mesne conveyances made after the issue of the patents, and that these transactions have gone on through a series of years without any question having been raised on the part of the government.

The authorities above cited, in division II of this brief, establish that the defense of estoppel would be available in such suit to the complainants.

3d. The complainants would also be in position to defend against the United States in such suit upon the ground of their being *bona fide* purchasers of the lands, and in such suit the United States would be required by their pleading to state clearly the facts upon which the charge of fraud or mistake was based, and the burden would be upon them to sustain the charge by clear and convincing proofs, even though to do so would require the proof of the negative. A preponderance of the evidence merely would not sustain it.

Maxwell Land Grant Case, 121 U. S., 325 at 379, 381.
Colorado Coal Co. vs. United States, 123 U. S., 307 at 313, 314.
United States vs. Burlington, &c., R. R. Co., 98 U S., 334 at 342.
United States vs. California, &c., Land Co., 148 U. S., 31 at 40.
United States vs. Winona, &c., R. R. Co., 165 U. S., 463 at 478.
Same case in Court of Appeals, 67 Fed., 948 at 960.

In Maxwell Land Grant Case, 121 U. S., at 379, 381, this statement of the law is made, and is repeated in Colorado Coal Co., vs. United States, 123 U. S., 307 at 316, 317, viz: "The deliberate action of the tribunals to which the law commits the determination of all preliminary questions, and the control of the processes by which this evidence of title is issued to the grantee, demands that, to annul such an instrument and destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court, and that the case itself must be entirely within the class of causes for which an instrument may be avoided. * * * We take the general

doctrine to be, that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cnn not be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the case cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents and other solemn evidences of title emanating from the government of the United States under its official seal? *In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof.* It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the government, and as in this case, under the seal and signature of the President of the United States, himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who choses to attack them in a court of justice; but it should be well underderstood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

The evidence that the complainants are *bona fide* purchasers, through mesne conveyances from the patentees, of the lands in controversy in this case, is fully set forth in division III of the brief of Mr. M. H. Stanford, to which

reference is made, and that evidence is entirely uncontradicted, See, also, testimony of the complainants, Rec., pp. 105, 107, 111, 130.

The evidence in the case in regard to the character of the survey is in the statement of admitted facts.

There is no evidence *upon the ground* that any actual survey of said township 57 was ever made by said Howe, as required by his said contract, or by the rules and regulations of the General Land Office, and there is no evidence that section lines were ever run by him along or across said township.

(R., p. 101, folio 302.)

It is not conceded in the case that no survey of the township was made, or that the field notes or plat are false or fictitious, or that they are in any sense fraudulent.

POINT VI.

The jurisdiction of the court to enjoin the acts of the defendants in making a survey of the lands.

1st. The survey is made under the contract between the defendant Kirwan and the defendant Croswell, under the direction of the Commissioner of the General Land Office, *with the object and purpose of filing the field notes and a plat of the survey in the United States Land Offices, so that the lands in controversy may be treated as government lands, open for homestead or other claims, or for purchase, under the laws governing the disposition of the government lands.*

(Exhibit A, p. 42, and Exhibit C, p. 51, of Defendants' Answer, and the agreed statement of facts, p. 104, folio 311).

These proceedings of survey, field notes, and plat, will constitute a cloud upon the complainants' title to the land.

The survey is the first step taken for the creation of a cloud.

Under the general equity powers of the Federal courts, they have jurisdiction to quiet title to lands in favor of the party in possession, having the title, against a party not in possession, who sets up a claim to the land which constitutes a cloud upon the possessors' title.

Peirsoll vs. Elliott, 6 Pet., 95 at 98.
McConihay vs. Wright, 121 U. S., 201 at 205, 206.
Frost vs. Spitley, 121 U. S., 552 at 556.
United States vs. Wilson, 118 U. S., 86 at 89.

The reason why the general jurisdiction of courts of equity are limited to cases in which the complainants are in possession of the lands is, that, if not in possession they have an adequate remedy at law by ejectment; the further reason applicable to the Federal courts is that the right to trial by jury is preserved in those courts in all cases in which the conditions are such that the matter in controversy may be tried in a suit at law by a jury.

In those states where, by statute, a right is given to a party to maintain a suit in equity to quiet title to land owned by him, which is vacant or unoccupied, that right may be enforced in the Federal courts. The right is held to be the creation, by statute, of an equitable right, which right, by reason of the defendant not being in possession, can not

be tried in an action at law; there is therefore no infringement in such case of the right to trial by jury.

Clark vs. Smith, 13 Pet., 195.
Holland vs. Challen, 110 U. S., 15 at 20 to 25.
Reynolds vs. Crawfordsville Bank, 112 U. S., 405 at 410, 411.
United States vs. Wilson, 118 U. S., 86 at 89.
Rich vs. Braxton, 158 U. S., 375 at 405.
Dick vs. Foraker, 155 U. S., 404 at 414, 415
Greeley vs. Lowe, 155 U. S., 58 at 75.
Cowley vs. Northern Pac. R. R. Co., 159 U. S., 569 at 582, 583.
Smyth vs. Ames, 169 U. S., 466 at 517.

In Reynolds vs. Crawfordsville Bank, 112 U. S., 405, a bill was filed in equtty to quiet title under the statute of the State of Indiana.

The bill averred a claim set up by the defendant under a deed which was void on its face. In sustaining the suit, the Court say (pp. 410, 411, 412): "While, therefore, the courts of equity may have generally adopted the rule that a deed, void upon its face, does not 'cast a cloud upon the title which a court of equity would undertake to remove, we may yet look to the legislation of the State in which the court sits to ascertain what constitutes a cloud upon the title, and what the State laws declare to be such the courts of the United States sitting in equity have jurisdiction to remove. This was expressly held in the case of *Clark vs. Smith*, 13 Pet., 195, 203, where it was said by this Court: 'Kentucky has the undoubted power to regulate and protect individual rights to her soil, and to declare what shall form a cloud on titles; and having so declared, the courts of the United States, by removing such clouds, are only applying an old practice to a new equity created by the legislature.'"

"The State of Indiana, where the present case arose, has declared by statute what kind of a claim against real estate is

such a cloud upon the title as will support a suit to remove it. § 1070 Rev. Stat. of Indiana, 1881, provides as fnllows: 'An action may be brought by any person, either in or out of possession, or by anyone having an interest in remainder or reversion, against another who claims title to or interest in real property adverse to him, although the defendant may not be in possession thereof, for the purpose of determining and quieting the question of title.' "

"This act confers upon any one, against whom another, whether in or out of possession, claims an adverse title or interest in real estate, the substantial right of having the disputed title settled by action of the courts. * * * The question whether, under such a statute as that of Indiana and under the facts stated, the Circuit Court had jurisdiction to render the decree complained of, has been, in effect, decided in the affirmative by this court in the case of *Holland vs. Challen*, 110 U. S., 15."

"In that case a statute of Nebraska was under review, which provided that 'an action may be brought and prosecuted to final decree by any person, whether in actual possession or not, claiming title to real estate, against any person who claims an adverse interest therein, for the purpose of determining such interest and quieting the title.' The Court, speaking by Mr. Justice Field, declared in substance that this statute dispensed with the general rule of courts of equity, that, in order to maintain a bill to quiet title, it was necessary that the party should be in possession, and, in most cases, that his title should be established at law or founded on undisputed evidence or long-continued possession."

"If the equity courts of the United States in Nebraska could dispense with these well-established rules of equity, and administer the rights conferred by this statute, it is not open to question that, in this case, the Circuit Court could disregard a similar rule, and entertain jurisdiction of the appel-

lee's case, and accord to him the rights conferred by the statute law, even though the deed under which the appellant claimed was void on its face."

"As the same statute authorizes the court to take cognizance of the case even when the title of defendant amounts to more than a mere cloud, and applied in every case when the defendant claims an adverse interest in or title to the property in controversy, it is clear that the assignment of error under consideration has no support."

The statutes of the State of Minnesota provide as follows:

"Sec. 2. *Action to Determine Adverse Claims.* An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein, or lien upon the same, adverse to him, for the purpose of determining such adverse claim, estate, lien, or interest; and any person having or claiming title to vacant or unoccupied real estate may bring an action against any person claiming an estate or interest therein adverse to him, for the purpose of determining such adverse claim, and of the rights of the parties, respectively." St. Minn. 1878, c. 75, § 2, p. 814.

It will be observed that the statute of Minnesota is substantially the same as the statute of Indiana, referred to in the case of Reynolds vs. Crawfordsville Bank.

It is clear that, under this statute, the Circuit Court in which this suit was brought, sitting in Minnesota has jurisdiction to remove the cloud from the complainants' title to the lands in controversy, which lands, in respect to the parties to this suit, are vacant and unoccupied.

2nd. Where courts in equity have jurisdiction to remove a cloud from title to lands, they have jurisdiction to prevent, by

injunction, the proceedings for the creation of a cloud, and suit in any such case is in the character of a bill *quia timet*.

1 High on Injunctions, Sec. 372, (2nd Ed.)
3 Pomeroy Eq. J., Sec. 1345 and 1398, note.
1 Story Eq. J., Sec. 700.
Petit vs. Shephard, 5 Paige, 493 at 501, 502.
Oakley vs. The Trustees of Williamsburgh, 6 Paige, 262 at 265.
O'Hare vs. Downing, 130 Mass., 16 at 19.
Peirsoll vs. Elliott, 6 Pet., ~~96~~ 95
Sharon vs. Tucker, 144 U. S., 533 at 544, 545, 546, 547.
Briggs vs. French, 1 Sumn., 504.
Union Pac. R. Co. vs. Cheyenne, 113 U. S., 516 at 526, 527.

1 High on Injunctions, Sec. 372 (2nd Ed.) says as follows: "The prevention of a cloud upon title is a salutary branch of the jurisdiction of equity, recognized by all the authorities, and founded upon the clearest principles of right and justice. The jurisdiction by injunction to prevent a cloud upon title is closely analogous to the well-settled jurisdiction of courts of chancery for the removal of cloud upon title; and the reasoning which supports the jurisdiction in the latter case would seem to apply with equal if not greater force in the former. It seems, therefore, to follow as a necessary consequence that if the aid of equity may be invoked to remove a cloud upon title to realty, it may with equal propriety be exerted to enjoin such illegal acts as will necessarily result in a clouded title."

In Petit vs. Shepherd, 5 Paige, 493, a bill was filed to prevent the sale of land upon execution. In sustaining the bill, the Chancellor uses the following language (pp. 501, 502): "The jurisdiction of this court to set aside deeds and other legal instruments, which are a cloud upon the title to real estate, and to order them to be delivered up and cancelled, ap-

pears to be now fully established. * * * And if a court of chancery would have jurisdiction to set aside the sheriff's deed which might be given on a sale, and to order the same to be delivered up and cancelled, as forming an improper cloud upon the complainant's title to his farm, it seems to follow, as a necessary consequence, that the court may interpose its aid to prevent such a shade from being cast upon the title when the defendant evinces a fixed determination to proceed with the sale."

In Oakley vs. The Trustees of Williamsburgh, 6 Paige, 262, a bill was filed to enjoin the Trustees of the village from proceeding to cut down and alter the grade of a street which had been once regularly graded, by which proceeding a cloud would be cast upon the complainant's title to real estate.

In sustaining the bill, the Chancellor says (p. 265): "As a prudent man would not be likely to buy a city or village lot for the purpose of building thereon, and pay the full value of the lot, while a cloud like this was hanging over the title, which might thereafter subject him to litigation if not to actual loss of the property. And as this court sometimes exercises its jurisdiction for the purpose of removing a cloud from the complainant's title to real estate, it may also, in a proper case, interpose its authority to prevent the illegal act from which such a cloud must necessarily arise."

In O'Hare vs. Downing, 130 Mass., 16, a bill was filed to prevent a levy and sale under execution.

In deciding the case, Chief Justice Gray uses this language (p. 19):

"A court of chancery will restrain by injunction a threatened levy of execution upon real estate which is not legally subject to such levy, and thus prevent a cloud upon the title,

without compelling the owner of the land to wait until the levy has been completed, and then admit himself to be disseised, in order to maintain a writ of entry."

In Briggs vs. French, 1 Sumn., 504, a bill was filed to quiet title against an attachment and levy made by the defendant, by connivance with his debtor, upon lands sold by the latter to the plaintiff before the deed to the plaintiff was recorded. The bill prayed an injunction to prevent the defendant from selling or conveying the land.

Upon demurrer filed against the bill, Circuit Judge Story says: "I am very clear that the demurrer must be overruled. This is a case of relief sought against a meditated fraud to the injury of the plaintiff which throws a cloud over his title, and which he has a right to have removed."

The right to maintain suit and prevent the creation of a cloud upon the title in case of vacant or unoccupied lands is clearly within the intent and purpose of the statute of Minnesota, and would be enforced in the courts of that state.

For like reason the same right will be enforced in the Federal courts sitting in Minnesota. See Reynolds vs. Crawfordsville Bank, 112 U. S., 410, cited above.

But the jurisdiction of the courts, either State or Federal, does not depend in such case upon the state statute. Remedy to prevent the wrong or injury threatened or intended by the proceedings to create a cloud upon the title exists in equity, because the only effective remedy is by injunction to stay the proceedings.

The right to trial by jury is not invaded, since there is no opportunity at law to try the controversy.

3rd. In order that the complainants be remitted to their remedy at law, it must appear that such remedy is plain and adequate in the sense that it is "as practical and efficient to the ends of justice, and its prompt administration as the remedy in equity," and the circumstances of the case must determine whether there is such remedy at law.

Boyce vs. Grundy, 3 Pet., 210 at 215.
Watson vs. Sutherland, 5 Wall., 74 at 78.
Payne vs. Hook, 7 Wall., 425 at 430.
United States vs. Union Pac. R. R. Co., 160 U. S., 1 at 51.
Oelrichs vs. Spain, 15 Wall., 211 at 228.
McConihay vs. Wright, 121 U. S., 201 at 205, 206.
Holland vs. Challen, 110 U. S., 15 at 24.

In Holland vs. Challen, 110 U. S., 15, Mr. Justice Field, delivering the opinion of the Court, says (p. 24): "No adequate relief to the owners of real property against the adverse claims of parties not in possession can be given by a court of law. If the holders of snch claims do not seek to enforce them, the party in possession, or entitled to the possession—the actual owner of the fee—is helpless in the matter, unless he can resort to a court of equity."

If the proceedings sought to be enjoined in this case are allowed to be completed the inevitable result will be various claims made for the lands as government lands. The very object of the survey is to open lands to such claimants, and in order that the complainants defend and maintain their title a multiplicity of suits will be the result.

No action at law is adequate to the complainant's protection.

Under these conditions the Court will enjoin the acts of the defendants to prevent a multiplicity of suits.

Pomeroy Eq. J., Sec. 243, 245, 267, 268.
Livingston vs. Livingston, 6 John. Chy., 497 at 500.
De Forest vs. Thompson, 40 Fed., 375 at 378.
(Opinion by Judge Jackson, Mr. Justice Harlan concurring.)
Osborne vs. Wisconsin Cent. R. Co., 43 Fed., 824 at 827.
(Opinion by Mr. Justice Harlan.)
Crews vs. Burcham, 1 Black, 352 at 358.
Louisville, &c., R. Co. vs. Ohio, &c., Co., 57 Fed., 42 at 45, 46.
New York, &c., R. Co. vs. Schuyler, 17 N. Y., 592.
Board of Supervisors vs. Deyoe, 77 N. Y., ~~217.~~ 219

4th. Complainant's evidence shows that to make the intended survey of the lands there would be necessarily cut down a considerable quantity of the pine timber standing upon the lands, and by the cutting of such timber, the remainder of the valuable pine timber would be exposed to destruction by fire. An irreparable injury is threatened.
(R. pp. 170, 162.)

It is an undisputed fact that the chief value of the lands in controversy consists in the pine timber standing upon them.

It is a fact of common knowledge that the felling of timber in the pine forests in the northern states is a source of special and great danger to the *remaining* pine timber standing upon the lands. Fires are easily kindled, and there is constant likelihood of their being kindled, in the dry tops and refuse of the fallen trees; having gained force from the quantity of refuse the fires spread rapidly and for long distances. The standing timber is not destroyed by being burned up, but the heat about the roots of the trees kills the trees and destroys their value.

The cutting of the timber by the defendants will not be confined to one place, but will be along the different lines

running through the forests upon which the survey is made. In this manner an exposure to the danger of fire will be made to large portions of the lands.

The court has jurisdiction, by injunction, to prevent the cutting of timber and the threatened danger of its destruction.

Livingston vs. Livingston, 6 John. Chy., 497 at 499, 500.
Wilson vs. City of Mineral Point, 39 Wis., 160 at 163, 164.
Butman vs. James, 34 Minn., 547.
Smith vs. Roc, 59 Vt., 232.
West Point Iron Co. vs. Reymert, 45 N. Y., 703, 705.
Camp vs. Dixon, Mitchell & Co., 112 Ga., 872.
Erhardt vs. Boaro, 113 U. S., 537 at 539.
North Pac. R. R. Co. vs. Hussey, 61 Fed., 231 at 235, (Ct. of Appeals.)
Oolagah Coal Co. vs. McCaleb, 68 Fed., 86 at 89, (Ct. of Appeals.)
Buskirk vs. King, 72 Fed., 22 at 25, (Ct. of Appeals.)
Dimick vs. Shaw, 94 Fed., 266 at 268, (Ct. of Appeals.)

5th. The fact that the defendants are acting under the direction of the Land Department does not deprive the court of jurisdiction to restrain acts done by them which are injurious to the complainants, and which are unlawful acts.

The title of the United States to the lands in controversy having been conveyed by the patents under which the complainants obtained that title, the Land Department has no authority, either upon the ground of fraud, or mistake in the survey of the lands, to interfere with the complainant's title, or ownership or possession of the lands.

They have no more right to enter upon the lands to resurvey them than they have to enter upon and resurvey any lands owned by private parties.

Before any entry can be made upon the lands by them, under a claim that they are government lands, the patents

must be set aside, or declared void by the court in a suit instituted for that purpose on the part of the United States.

This position is clearly maintained by the decisions of this court.

Moore vs. Robbins, 96 U. S., 530 at 532, 533.
Cragin vs. Powell, 128 U. S., 691 at 699, 700.
United States vs. Schurz, 102 U. S., 378 at 401, 402.
Steel vs. Smelting Co., 106 U. S., 447 at 453, 454.
Widdicombe vs. Childers, 124 U. S., 400 at 405.
Hardin vs. Jordan, 140 U. S., 371 at 401.
Noble vs. Union River Logging Railroad, 147 U. S., 165 at 175.
Michigan Land & Lumber Co. vs. Rust, 168 U. S., 589 at 593.
McCormick Machine Co. vs. Aultman, 169 U. S., 606 at 609.
United States vs. San Jacinto Tin Co., 125 U. S., 273 at 282.
United States vs. Winona & St. Peters R. Co., 67 Fed., 948 at 959, (Ct. of Appeals.)

The defendants, in attempting to survey the lands, are acting without right and without lawful authority from any source.

BENTON HANCHETT,
Of Counsel for Appellees.

M. H. STANFORD,
Solicitor and of Counsel for Appellees.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1901.

No. 408.

P. H. KIRWAN, AS UNITED STATES SURVEYOR-GENERAL FOR THE DISTRICT OF MINNESOTA, AND
THOMAS H. CROSWELL,

Appellants.

vs.

SIMON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. FLINN AND TEMPLE E. DORR,

Appellees.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF ON BEHALF OF APPELLEES.

Statement of Case.

This is a bill in equity wherein the complainants ask for a decree restraining and perpetually enjoining the defendants from making a survey of

certain lands surrounding Cedar Island Lake, now known as Ely Lake, in Township Fifty-seven (57), North of Range Seventeen (17) West, St. Louis County, Minnesota, such survey having been ordered by the Land Department of the United States.

At the time the suit was commenced, the defendant Kirwan was United States Surveyor-General for Minnesota, and the defendant Croswell was a Deputy Surveyor, with whom a contract had been made by order of the Commissioner of the General Land Office to make the survey.

Upon the filing of the bill, and after due notice and hearing, the temporary injunction was issued as prayed for in the bill. The order allowing the temporary injunction was appealed from, to the United States Circuit Court of Appeals, Eight Circuit, and the order affirmed.

Murphy et al vs. Kirwan, 103 Fed. 104.

The defendant then appealed to the Supreme Court of the United States, and on motion of the appellees the appeal was dismissed.

Murphy et al vs. Kirwan, 70 U. S. 205.

The proofs were thereafter taken, and on the first day of December, 1899, the case was brought on for hearing, on pleadings and proof and argument of counsel before the Hon. William Lochren, Dis-

trict Judge, sitting as Circuit Judge. The case was duly submitted and by the Court taken under advisement. The Court's opinion and decision therein was filed the 16th day of July, 1900, with an order that the decree as prayed for in the bill be entered, (Pp. 330-336, Printed Record). On the 23rd day of July, 1900, after due notice, a decree for the complainants was entered, decreeing that the complainants were the grantees and owners by mesne conveyances from the patentees of the title of record and in fact to the land in controversy; and that the said fractional lots extend to and are bound by the actual waters of Cedar Island Lake; that the defendants had no jurisdiction or authority to meddle with said land or to make the survey complained of in the bill.

It was further ordered and decreed that the temporary injunction issued in the suit be and the same was declared perpetual, Printed Record, page 340-342, page 338-339. The defendants appealed from such decree to the United States Circuit Court of Appeals, Eight Circuit, and the decree was affirmed, (page 347-348, Printed Record). It is from this decision that the defendants appealed to this Court.

The following are the undisputed facts in the case.

On or about April 26, 1876, a contract for the survey of all lands in Township 57 North of Range 17 West, in St. Louis County, Minnesota, was made

by the Government of the United States with one Henry S. Howe, as a Deputy Surveyor of the United States, and thereafter said Howe made and filed field notes of a survey of said Township, from which the official plat of said Township was thereafter made and approved by the Surveyor-General of the United States for the District of Minnesota, and by the Commissioner of the General Land Office; of which plat Exhibit "A," attached to the bill of complaint, is a substantially correct copy.

There is no evidence upon the ground that any actual survey of said Township 57 was ever made by said Howe as required by his said contract and by the rules and regulations of the General Land Office, or at all, beyond the running and due marking of the exterior boundary lines of said Township where the section, quarter and other posts and markings established by him are, and always have been, clear, distinct and readily found and traced. There is no evidence on the ground that section lines were ever run by him in or across said Township, or section corner posts or quarter posts ever located or set by him, except a corner post at the Northwest corner of Sec. 36, and a quarter post in the Western line of said Sec. 36, and there is no evidence that witness trees were ever blazed or marked by him.

Cedar Island Lake is a navigable, deep and permanent body of water, fed principally from springs, having an area of about nine hundred acres, instead of about eighteen hundred acres as described in the field notes of Howe and shown

on said official plat of said Township. Instead of the shores of said lake being low and swampy, as stated in said field notes, the banks are generally high and sloping lands suitable for agriculture, extending around the lake, and support a growth of pine and other forest trees large enough for lumbering, such as will not grow in water. The condition was the same in 1876, and no material part of the land surrounding the lake is accretion. Southerly and westerly of said Cedar Island Lake are five other deep, navigable lakes in the same Township, none of which are shown by the field notes of Howe's survey or upon said Government official plat of said Township: and all of the land in said Township, as shown by said official plat, since the making of said plat, has been sold and patented by the Government, as land, according to said plat. There is no other evidence that the meander line of said Cedar Island Lake was ever surveyed by said Howe, except the field notes, plat and patents, or any meander posts placed by him about said lake, except one where the North line of said Township encounters said lake; and the outlet of said lake is at a different place from that described in said field notes and shown upon said official plat. After the making of the said survey and plat, and before its approval, complaints touching the accuracy thereof were made to the Commissioner of the General Land Office, but, on the withdrawal of such complaints, the said survey and plat were approved.

The land lying between the actual water line of Cedar Island Lake and the meander line of the lake,

as delineated on said official plat of said township, comprise the land in controversy in this suit, and is the same land directed to be surveyed by the Commissioner of the General Land Office, and referred to in the Surveyor's contract which is attached as Exhibit "A" to the answer in this suit, being therein described as

> "The public lands situate in Sections 2, 3, 4, 9, 10 and 11, in Township No. 57 N. R. 17 W. of the 4th principal meridian lying between the 'Old Meander' of Cedar Island Lake, as given by the original field notes of Henry S. Howe, United States Deputy Surveyor, approved by the Surveyor-General of Minnesota, August 19, 1876, and the shore line of said Cedar Island Lake."

Prior to the commencement of this suit the United States had sold and by its patents had conveyed to the purchasers according to said official plat, made from said Howe survey, all the land in Township 57, as the same appeared upon said plat, to which plat all of said patents expressly referred, it being then and still the only Government plat of said township.

The complainants are the grantees and owners by mesne conveyances from the patentees of the record title to the following described fractional lots in said township, to-wit: Lots one (1), two (2) and three (3) in Section two (2); Lots one (1) and two (2) in Section three (3); Lots one (1), eight (8) and portions of Lots three (3), five (5), six (6) and seven (7) in section four (4); lots one (1), two (2), three (3) and four (4) in section nine (9); lots

one (1), two (2), three (3) and four (4) in Section ten (10); and Lot three (3) in Section eleven (11), being the same lands which are more particularly described in complainants' bill, and each of which fractional lots appear and are represented on said official plats as bounded by and upon Cedar Island Lake. There is no allegation or proof that complainants, or any of the grantors in their chain of title, including the patentees, had any notice or knowledge of any fraud or misconduct on the part of said Howe in or about the making of said survey and field notes, or that there was any inaccuracy in said survey, and, so far as it appears, all were purchasers in good faith of said lands.

Complainants purchased said fractional lots in 1883 from the patentees or their grantees in their chain of title, for the pine timber thereon, and the convenience of landing the timber so purchased, and a large amount of other timber which they owned, lying in the township adjoining, it being the intention of complainants to use Cedar Island Lake and the riparian rights which it afforded to facilitate ther lumberig operations, and to transport their timber to market from this lake and through the waters of the St. Louis River to the place of manufacture. The complainants then were and ever since have been and now are non-residents of the state of Minnesota, being residents of the State of Michigan; but before making such purchase, and just prior thereto, they caused the lands to be explored and examined by an experienced timber estimator, who in making such examination used as his guide, as is customary in such cases, a copy of

said official plat of said township which did not have upon it any statement of the acreage or amount of land in any of the subdivisions, and who reported to the complainants his estimate of the amount of pine on said lands and the general character of said land, and the riparian character thereof as bounded upon Cedar Island Lake, and the facilities which it furnished for holding and marketing their timber, but did not discover or report any error in the survey of said township, or any error or mistake in the said official plat. And the said complainants purchased, paid for and took conveyances of said lands in good faith, and without any notice or knowledge of such fraud, error or mistake, paying for the land and these fractional lots on an actual estimate of the timber to the actual shore line of Cedar Island or Ely Lake.

The other permanent lakes in said township, not shown upon said official plat, but appearing thereon as land, and since sold and patented by the Government as land, according to such official plat, include areas equal to the area of said Cedar Island Lake; and portions of such lakes were purchased by complainants as land, with their other purchases in said Township, and the adjoining Township on the North.

The survey sought to be restrained in this suit was ordered by the Commissioner of the General Land Office, upon the direction of the Secretary of the Interior, in proceeding instituted by certain settlers upon the land in controversy, of which proceedings the complainants had due notice, and in which they appeared, and covers but a small por-

tion of the township, only the fractional lots about Ely Lake and bordering thereon, embracing only about 900 acres, Fol. 302, page 101. In the remainder of the township like and greater errors occur. A glance at the plats, complainants' Exhibit "A" and "D," demonstrates this. See also Folio 303, Record. In that part of the township lying south of the territory sought to be surveyed, there is an absence of interior lines, and no evidence on the ground that any section corner posts or quarter posts were ever set by the Government Surveyor, Fol. 301-303, Record. This territory, however, which the Government has taken no steps to survey, the patentees and their grantors, including the complaints in this suit, are the sufferers by the deficiency, as an examination of the plat, Exhibit "D," shows: The lakes which the Government has sold as land and do not appear on the Government plat exceed the entire area of Cedar Island Lake, or Ely Lake, as shown on the Government plat, Fol. 310 Printed Record.

In 1894, and prior to the institution of the proceedings which culminated in the order for the survey, to enjoin which this suit was commenced, the County Surveyor of St. Louis County, pursuant to the order of the Board of County Commissioners, made a survey of the two northern tiers of sections in township 57-17 for the purpose of re-establishing the interior lines and corners, Printed Record, Fol. 763, page 255; Fol. 718, page 240; Fol. 509, page 170; Fol. 432, page 144. The correctness of this survey is confirmed by three competent engineers and land surveyors, and is not disputed by the

defendants, in pleading or proof, Printed Record, Fol. 525, page 175; Fol. 498-499, page 166-167. Complainants' Exhibit "D" attached to the bill is based in this survey. And does not threaten the rights of the complainants or any other property owner in the township.

There are ten forties known to be underlain with iron ore, with a tonnage of twenty millions, on which mining has been in progress for seven years (two since testimony was taken) and the boundaries of valuable timber land, on much of which timber has been cut, would be affected by a re-survey, as ordered by the land department, the boundaries of the mining property and of the timber land having been fixed by the Patton Survey, Printed Record, Fol. 507, 508, page 170; Fol. 527, 528, page 176. The lines and corners in the portion of the township not covered by the order can be readily established on the principles of the Patton Survey.

The greater portion of the land in dispute is covered with valuable pine timber. A new survey, to be of use to any one, must be by the best methods: this is obvious. A survey by solar compass would not be sufficiently accurate. A clear transit line must be cut through the heavy timber, and measurements taken with steel tape and plumb bob through about one hundred miles of lines, Folio 234, Printed Record. Not only will the valuable timber which must be cut for the transit lines be destroyed, but from the debris resulting, the remainder of the timber will be endangered by fire, and complainants will thereby be greatly and irreparably injured.

An examination of the instructions to the defendant, the Deputy Surveyor, commencing on Fol. 165 of Printed Record, a part of defendants' answer, shows that the survey by the methods proposed must necessarily provoke a multiplicity of suits, not only between the complainants and settlers on the land in dispute, but between adjoining owners of the vast deposits of iron ore and millions of feet of pine timber, still in and on the land and the portion which has been already removed therefrom.

The defendants on previous hearings of this case have assumed that it is a conceded fact that the interior of this township has never been surveyed. This we have always, and do now, most strenuously deny, and the conceded facts in the case, we believe, support our position.

ARGUMENT

The proposed action of the defendants in making this survey is justified on the sole ground that they are the subordinate officers and agents of the interior Department of the United States, and are acting under and by virtue of the authority and orders of their superior officers. It is, therefore, a question of the authority of the Land Departmnet of the United States to order the survey, and the questions involved in the case all turn upon the point, whether the land sought to be surveyed is Government land.

The complainants contend that it is not Gov-

ernment land; that the sale of these fractional lots by patents describing the land as "according to the official plat of the survey of said land returned to the General Land Office," conveyed all the lands in the fractional lots, such lots so conveyed extending beyond the meandered line to the actual waters of Cedar Island Lake, the lake itself constituting the boundary as shown by the Government plat, although the lake is not correctly delineated thereon.

If we are right in this proposition, it follows as a matter of course *that the Department of the Interior has no jurisdiction over these fractional lots, or over the land lying between the meander line and the actual waters of the lake on these lots, and has no right to order or cause a survey of the same, and may be enjoined.*

From the facts in this case which are clearly established and undisputed, nearly all of which are admitted in the answer or by the stipulation of facts, the decree of the Circuit Court, and the order affirming it by the Court of Appeals, should be affirmed. No stronger case for the equitable interference by the Court has been cited on either side in the various arguments which have been presented in the history of this proceeding than appear in the case at bar.

The complainants are the owners of the fractional lots, which lots are described "as according to the official plat of the survey of the said lands returned to the General Land Office by the Surveyor General." The official plat shows these lots to be bounded by and upon the waters of Cedar island Lake, now known as Ely Lake. If there was

any fraud in the original survey, or any inaccuracy in the survey and plat, neither the patentees nor the complainants, nor any one of the complainants' grantees in their chain of title had any notice or knowledge. *They purchased the land in good faith relying on the Government plat, and one of the principle inducements to the purchase was the riparian rights which the lake as a boundary furnished in lumbering and marketing, not only the timber on the land whose boundaries are in dispute in this action, but also a large amount of other timber which they then owned and for which there was then no other feasable route to market.*

They also purchased every foot of land in these fractional lots with boundaries extending to the actual waters of the lake. They purchased it on an actual estimate of the timber extending to the actual waters of the lake.

Cedar Island Lake, or Ely Lake as it is called, exists on the ground and there is no other body of water which will meet the calls of the patent or that the meander line can represent. This lake is the natural, unchangeable monument and boundary to these lots; it is the only fixed and visible boundary to the lots on the lake side, no other water intervenes at any point between the meander line and the actual waters of the lake.

The Land Department of the United States now proposes to take summary possession of the most valuable part of these lots, the portion which furnished the principal inducements for purchase by the complainants, and the only portion by which the patentees or their grantees were able to

locate with certainty the boundaries of these lots from a fixed and visible monument.

I.

Government bound the same as an Individual by its Contracts.

In the surveying, platting, offering for sale and selling of lots the Government deals as proprietor. The transactions are matters of business, and, as between the Government and its patentees, or the purchaser from such patentees, all of the rules applicable to private ownership and private sales attach as in the case of an individual vendor.

U. S. vs. San Jacinto Tin Co., 125 U. S., 273 (31 L. 751).
Clarke vs. U. S., 6 Wall. (U. S. 543).
U. S. vs. Smoot, 15 Wall. (U. S.), 47 (21 L. 107).
Amoskeag Mfg. Co. vs. U. S., 17 Wall. (U. S.), 592 (21 L. 715).
U. S. vs. Bostwick, 94 U. S., 53, 66 (24 L. 66).
U. S. vs. Smith, 94 U. S., 4 Otto., 214 (24 L. 115).
Chicago, etc., R. Co. vs U. S., 104 U. S., 680 (26 L. 891).

This court has always held whenever the question has come before it, that the United States are as much bound by their contracts as are individu-

ais, and without compensation cannot take back that which they have granted, nor defeat a vested right arising from any source.

Union Pacific R. R. Co. vs. U. S. 99 U. S. 700-718 (25 L. 501).

U. S. vs. Stanford, 161 U. S. 433 (40 L. 760).

Hepburn vs. Giswold, 75 U. S. 603-624 (19 L. 513-526).

II.

Government is bound by its Plat.

The Government as against purchasers in good faith is bound by its plat in accordance with which it has sold and conveyed all the land in that township. *The Government lots in question were patented and described in such patents as according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor General. Fol.* 785, 789, 821, 825, 861, 870, 769, 888, 893, Printed Record. Where any grant or conveyance is made according to the plat, that plat becomes, for the purpose of description and identification of the land, a part of the deed or other instrument of conveyance.

Schurmeier vs. Railroad Co., et al., 10 Minn., 82 (Gil.) 59.

St. Paul, Stillwater & Taylor Falls R. R. Co. vs. First Div. of St. Paul & Pac. R. Co., 26 Minn., 31.

Nicolin vs. Schneiderhan, 37 Minn., 63.

Erkens vs. Nicolin, 39 Minn. 461.

Everson vs. City of Waseca, 44 Minn., 247.

Lampry vs. State, 52 Minn., 192.

Lampry vs. Mead, 54 Minn., 298.

Olson vs. Thorndyke, 76 Minn., 366.

Castle vs. Elder, 57 Minn., 289.

Grand Rapids and I. R. Co. vs. Butler, 159 U. S., 87 (40 L. 85).

Railroad vs. Schurmeir, 7 Wall., 272. confirming Schurmeir vs. R. R. Co., Supra. (19 L. 74).

McIver's Lessee vs. Walker, 9 Cranch. 173 at 177 (3 L. 694-696).

Moore vs. Robbins, 96 U. S., 580 (24 L. 848).

County of St. Clair vs. Lovingston, 23 Wall., 46 (23 L. 59)

U. S. vs. Schurz, 102 U. S., 379 (26 L. 167).

Jeffreys vs. Omaha Land Co., 134 U. S., 178 (33 L. 872, 878).

Hardin vs. Jordan, 140 U. S., 371 (35 L. 428, 433).

Jones vs. Soulard, 65 U. S., 24 How., 41 (16 L. 604, 602).

Mitchell vs. Smale, 140 U. S., 406 (35 L. 442).

Noonan vs. Braley, 2 Black, 499-509 (17 L. 278-280).

Horn vs. Smith, 159 U. S., 40 (40 L. 68).

Jones vs. Johnson, 59 U. S., 150 (15 L. 320).

Niles vs. Cedar Point Club, 175 U. S., 300 (44 L. 173).

French Glenn Live Stock Co. vs. Springer, 22 S. Ct. Rep., 566.

Meander Line not a Boundary.

The cases in the foregoing subdivision all hold that meander lines run in surveying fractional portions of the public lands, bordering upon navigable bodies of water, are not boundaries of the tract, but are for the purpose of defining the sinuousities of the bank of a stream, and as the means of determining the quantity of upland to be charged for; and such meander line does not limit the title of the grantee thereto. But where land is granted abutting on waters whose margins are thus meandered the waters themselves constitute the real boundaries, although they may not be coincident to the meander.

III.

Complainants are bona fide Purchasers in Good Faith.

Neither the patentees nor the complainants in this action nor any of the intermediate grantors are charged in the answer with any notice or knowl-

edge of fraud or misconduct on the part of the Surveyor Howe in the making of the survey or the field notes or any connection therewith, and there is no evidence that any of the patentees or intermediate grantors in complainants' chain of title had any notice or knowledge of any fraud or irregularity in the making of the survey or of the field notes.

It is an undisputed fact that this land was purchased from the Government by the respective patentees several years after the plat was approved and filed. (See date of patents, pages 23 to 31 of the Record) and the complainants purchased it after it had passed through several hands.

The complainants as to the Federal Government are remote grantees. See complainants' chain of title, Fol. 548 to 562, inc. of Record, and the several conveyances, Fol. 768 to 932 inc. of Record.

It is an undisputed fact in the case *that the complainants purchased the land in good faith, with no knowledge of any irregularities or fraud in the survey. That they purchased it relying on the Government plat and descriptions that the lots were bounded by the lake. That they purchased the land for the pine timber and also for the lake frontage*, as they had a large amount of timber just north of the lake, and at that time the lake was considered the only outlet for the timber. *The land was bought and paid for on an estimate of the timber up to the actual lake shore, was purchased for the riparian rights which the land possessed bordering on the lake, for the purpose of flooding said lake as a reservoir and holding ground in case of fire, and banking ground for the lumbering of timber, this was the object and basis of the purchase.*

The complainants by their bill allege that they are the *owners in fee of the land in dispute,* (Fol. 1 to 6 Printed Record) and the chain of title from the Government of the United States to themselves is particularly set out in the bill, (Fol. 15 to 23 Printed Record); *that they paid a valuable consideration for the same;* that they *purchased the same on an actual estimate of the pine timber at the time of the purchase standing on the land and extending to the actual waters of the lake;* that they purchased the same *in good faith, believing that their respective grantors had good and perfect title to the same* and to the whole thereof *extending to the actual waters and shore of the lake, and in reliance upon said Government plat; that they had no knowledge of the inaccuracy of the official survey of the township, or that there was any fraud in the survey, or that any fraud or inaccuracy was claimed in relation thereto at the time they made the purchase* or at any other time, until they learned of the application for the survey as set forth in the bill (Fol. 24 Printed Record); that at the time they made the purchase and at the time of the filing of their bill, they were the owners of a large amount of other pine timber standing on the land right north of the lake in question. The estimated amount of the timber at the time of the purchase being about sixty million feet, and the principal consideration that moved complainants to purchase the said Government lots was that the pine timber then owned by them in the adjoining township could be lumbered and placed in said lake and through its outlet floated down the St. Louis River

to market. That at the time of the purchase there was no other feasable means of transporting said timber to market, Fol. 25 Printed Record. The defendants by their answer admitted that the commissioner of the General Land Office approved said survey and plat after complaints were brought to his notice touching the accuracy thereof, (Fol. 110.) The defendants deny any knowledge or information as to the patenting of the Government lots shown upon the plat of the said Howe survey, or of the mesne conveyances from the patentees thereof to the complainants, and put complainants to the proof thereof. And defendants deny that they had any knowledge or information sufficient to form a belief as to what consideration, if any, was paid by the complainants or any of them for any conveyance to the complainants or any of them of any part of the land described in the complaint, or as to whether the complainants purchased any of the said lots in good faith or otherwise, or for the reasons stated in said bill or otherwise, Fol. 114, Printed Record. In the stipulation of fact and evidence, however, it is admitted *that the complainants are the grantees and holders by mesne conveyances from the patentees of said fractional lots*, (Fol. 309, Printed Record.) The following is the testimony bearing on the question of the purchase of the land by the complainants in good faith with no knowledge or notice of any fraud in the original survey or any inaccuracy therein, relying on the Government plat, and with the intention on the part of the complainants to acquire the riparian rights by reason of the fractional lots being bound-

ed by the actual waters of the lake. We quote such testimony entire commencing with the deposition of Elisha H. Flinn, Fol. 312 of Record to Fol. 324 of Record, inclusive:

DEPOSITION OF ELISHA H. FLINN.

Q. Where do you reside?

A. Detroit, Michigan.

Q. How long have you lived there?

A. Thirty years.

Q. State if you were one of the owners of the land which is in controversy?

Objected to as calling for a conclusion, and as incompetent.

A. Yes, sir.

Q. What knowledge have you of land about Ely Lake in Township 57-17 in this county, Mr. Flinn?

A. I have no personal knowledge, never was in the township until day before yesterday, in Section 5.

Q. State what you had to do, if anything, with negotiations of purchasing this land for Simon J. Murphy of Detroit?

A. I attended to the details of the purchase.

Q. State what was the basis of such purchase?

A. We purchased this land for the pine timber and also for the lake frontage, we having a large amount of timber just north in Township 58-17, and at that time considered that as the only outlet for the timber. The purchase of the land in 57-17 was largely for the outlet, as we supposed, of the lake; also the timber and land in the western part of the lake in 9 was purchased to control that portion in case we should dam the lake as a reservoir. We had no

knowledge whatever of any fraud or anything of that kind in connection with this survey.

Q. How about what you supposed to be the outlet of the lake?

A. Supposed it was on Section 11.

Q. You secured that to control the outlet?

A. Largely for that purpose; there was some timber on it too.

Q. Wouldn't you have bought it except for that?

A. No.

Q. How about that in section 9 covered by the waters of St. Maries' Lake?

A. This is the first I knew of it when I saw the plat here, that our land on section 9 was mostly under the waters of St. Marie's Lake.

Q. Supposed all the time it was timber land?

A. Yes.

DEPOSITION OF COMPLAINANT SIMON J. MURPHY.

1st Interrogatory. What is your name, age and occupation, and where do you reside?

1. A. Simon J. Murphy; age, eighty years; has always been that of a lumber man. Residence, at Detroit, Michigan.

2nd Interrogatory. State what interest you have, if any, in any portion of the following described lands situated in St. Louis County, State of Minnesota, viz: Sections 2, 3, 4, 9, 10 and 11, Township 57 N. R. 17 W., Fourth Principal Meridian of Minnesota, and state the particular description thereof in which you have or claim interest, if any?

A. I own an undivided one-half interest in Lots 1, 2, 3 of Section 2; Lots 1, 2 of Section 3; Lots 1, 8 of Section 4; Lots 1, 2, 3, 4 in Section 9; Lots 1, 2, 3, 4 of Section 10; Lot 3 of Section 11, Town 57 north, range 17 west; Lot 2 of Section 35; and Lots 1, 2 of Section 34, town 58 north, range 17 west, St. Louis County in the State of Minnesota.

3rd Interrogatory. If you state you have, or claim to have, an interest in such land, state when, and of whom, you purchased the same, and the land and interest originally purchased by you, and where you resided at the time you made such purchase.

A. On or about the 11th of April, 1883, I purchased the entire title from Phillip M. and Edmond D. Graff and Daniel E. Little to lots 2, 3, 4 of Section 1; lots 1, 2 of Section 3; lots 1, 8 of Section 4; lot 4 of Section 9; lots 1, 2, of Section 10; in town 57 north, range 17 west, together with lot 1 of Section 34, and lot 2 of Section 35, town 58 north, range 17 west. This purchase from Graff and Little included about 4000 acres tributary to Ely Lake in towns 57 and 58 north, range 17 west.

Fol. 317. 4th Interrogatory. If you say in answer to preceding interrogatories that you purchased any portion of said land, state what you supposed to be the true boundaries of any piece of said land so purchased by you, at the time you made such purchase.

A. On or about February 16th, 1884, I purchased of Morris Thomas of Duluth, Minnesota, lots 1, 2, 3 of Section 2, besides 80 acres of section 9 in same town. On or about ———— 1884, I purchased of the Nelson Lumber Company of Cloquet, Minnesota, NW¼ of SW¼ of Section 11, town 57 north, range 17 west, and lot 2 of section 34, town 58 north, range 17 west, besides about six hundred acres in Sections 13, 14 and 34.

town 58 north, range 17 west. On the 5th day of April, 1883, I purchased of Scott Griswold of Kent County, Michigan, lots 1, 2, 3 of Section 9, and one hundred and sixty acres in sections 8 and 9, town 57 north, range 17 west in same county. I also purchased about that time and since then other considerable tracts of pine timber in other parts of St. Louis County, Minnesota, for the purpose of lumbering.

A. (Fol. 321). I purchased these lands for their pine timber and originally took the title in my own name, intending to lumber the timber in the two towns above described into Ely Lake in the usual manner of lumbering by water. At that time there was no railroad contemplated in that locality, and I bought the lands around Ely Lake to facilitate the lumbering operations of this surrounding tract of pine timber, in the usual course of business, without any knowledge of any special excess in any of the descriptions.

Fol. 317. 5th Interrogatory. At the time you made such purchase what evidence of the boundaries of each of such descriptions so purchased by you, did you examine?

5. A. (Fol. 321). When I purchased these lands around Ely Lake I relied upon the plats and Government descriptions that they were bounded by the lake. I bought and paid for the timber which was estimated up to the lake shore at the rate of $1.65 per thousand feet at the time, which estimate included all the timber up to the shore of the lake.

Fol. 317. 6th Interrogatory. What did you rely upon as the evidence of the true boundaries of such lake at the time you made such purchase?

6 A. (Fol. 322). I took the report

and examination of my woodsman, relying upon the Government plat that the lands were bounded by the lake. I made no examination of the lands personally.

Fol. 318. 7th Interrogatory. What was the base of the purchase price of each piece of said land so purchased and paid for by you?

7 A. (Fol. 322). Upon the Government descriptions and boundaries, and upon the plats which I examined.

Fol. 323. A. The object and basis of said purchase of the lands bordering on Ely Lake was their value for the timber which stood upon them and the riparian rights which lands bordering upon Ely Lake possessed for the purpose of flooding said lake for a reservoir and holding ground in case of fire, and banking ground for the lumbering of timber. At that time no railroads had ever been contemplated in that locality, and I expected that this timber would be brought out through the streams and I relied upon this lake with which to lumber all this timber in that vicinity, comprising in all about 5600 acres and containing an estimate of upwards of 60 million feet of pine timber.

Fol. 318. 8th Interrogatory. When did you first hear of an alleged fraud in connection with the original Government survey of this land?

(Answered Fol. 324, 9th answer; mistake of printer.)

A. (Fol. 324.) Do not know that I have ever heard that there was any fraud. I have heard indirectly, long after I had made the purchase, that the survey of the lake was not very complete, but to what extent have never known. I have such rumors about them years ago.

Fol. 318. 9th Interrogatory. Before

or at the time you closed the purchase of said land had you heard of any fraud or rumors of fraud connected with the original Government survey of said land.

(Answered in Fol. 324, answers 10 and 11, error of printer.)

A. 10 and 11. (Fol. 324.) No. Nothing.

The following is from the testimony of complainant Geo. O. Robinson, who owns a one-sixth interest in the lands in controversy; commencing at Folio 332 of Printed Record:

Q. What is your name, age, occupation, and where do you reside?

A. My name is George O. Robinson, my age is 66 years, I reside in the city of Detroit, Michigan; my occupation is that of a retired lawyer and pine land dealer, associated with Mr. Elisha H. Flinn under the firm name of Robinson & Flinn.

Q. How long have you resided in Detroit continuously?

A. Upwards of 37 years.

Q. Where did you reside when you made said purchase? and of whom did you purchase the same and when?

A. I resided in Detroit, and purchased these lands as above stated and at the time stated in my answer to the preceding question.

Q. At the time you purchased this land what evidence did you have of the boundary of the several descriptions?

A. No other evidence than the Government plats and the lines and corners as found and the survey made by our woodsmen.

Q. What examination did you make of such evidence of boundaries and for what purpose did you make such examination?

A. We made no other examination

than that made by our woodsmen in identifying the land from the Government plats sufficiently for the purpose of estimating the timber and locating the riparian rights on the lake.

Q. What evidence did you rely on in making said purchase?

A. We relied upon the Government plats showing lots bounding on the lake and that they contained the amount of timber estimated by our woodsmen.

Q. What was the basis of the purchase price of each parcel of land so purchased?

A. The basis of each purchase, as far as I recollect, was the price per thousand, feet for the actual amount of timber estimated upon the entire tract as identified by our woodsman. The fractions around Cedar Island Lake were considered as of special value, aside from the timber, for their riparian advantages for lumbering purposes.

Q. When did you first hear of alleged fraud in connection with the original survey of the land?

A. I never heard of any alleged or other fraud until after this controversy had been commenced, and since then I have never heard of it in any other connection.

Q. When did you first hear of the inaccuracies in the original Government survey of the land?

A. Some time about the years 1892 and 1893; about the time the squatters referred to in this suit commenced to take possession of the lands about the lake?

Q. What, if anything, had you heard of inaccuracies in the Government survey of this land, or of fraud in connection therewith, before or at the time you closed such purchase?

A. I had not heard of either at that time.

Q. State what rumors of fraud, if any, you had heard in connection with the original government survey of this land before or at the time you closed the purchase of the same?

A. I had not heard of any.

Q. State what rumors of inaccuracy in said Government survey, if any, you had heard before or at the time you closed said purchase?

A. I have no recollection of having heard at that time of any inaccuracies relating to the survey of this land, until nearly 10 years after the purchase of this land.

Q. State what circumstances, if any, had come to your knowledge before or at the time you purchased this land in connection with said Government survey?

A. Not any such circumstances came to my knowledge.

Q. In examining the evidence of the boundaries of the several parcels of land so purchased by you and the estimate of the timber on the several tracts, state what circumstances, if any, appeared which would suggest fraud or inaccuracy in the Government survey? I refer to examinations made with a view of making said purchase.

A. There were no circumstances in any way suggesting fraud or inaccuracy in the Government survey in this purchase, nor were there circumstances in connection with the purchase of this land at that time different from scores of other purchases of other lands in a similar manner.

Q. State what was the feature of this land and timber as presented to you which you relied on in making the purchase and which principally induced you to make the purchase?

A. The features presented to us in making these purchases were: 1st. The

amount of timber, of which we secured in this purchase some 43,000,000 feet lying tributary to Cedar Island Lake. 2nd. The value of the boundaries on that lake to us in lumbering the timber, as at that time it appeared that this was the only outlet for this whole tract of timber, and the fact that we received this tract from Mr. Thomas Presnell, a former United States Land Register, gave as confidence in the regularity of the tract. About the same time we purchased other timber in T. 57 N. of R. 17 W and T. 58 N. R. 16 and 17 W. and also timber elsewhere in St. Louis County, Minnesota, aggregating by our estimate 125,000,000 feet of pine timber, and this tract was purchased in connection with the other tracts for the purpose of facilitating lumbering.

The following is from the testimony of Erwin Eveleth who examined the lands for the complainants at the time the purchase was made; commencing with Fol. 351.

Q. Mr. Eveleth, state your name, address, age and occupation?

A. Erwin Eveleth; Corunna, Michigan: age 57; occupation land-looker and estimator.

Q. How long have you been engaged in the business of examining and estimating lands?

A. Since 1866.

Q. Did you examine the lands purchased by Simon J. Murphy around and in the vicinity of Cedar Island Lake in T. 57 and 58 N. R. 17 W., St. Louis County, Minn., and when?

A. I did, in the spring and fall of 1883.

Q. How much land did you examine

and estimate that was purchased by him at that time?

A. There was like about 10,000 acres that was purchased that season.

Q. About how much that was purchased tributary and adjoining Cedar Island Lake, should you think?

A. About 4,000 acres.

Q. In locating the various lots, fractions and other descriptions upon what did you rely?

A. Upon the survey as we found it around the lake.

Q. Did you have a Government plat?

A. I did, yes, sir; I went by that.

Q. Did you have any knowledge that there was any fraud or irregularity in the survey of the lands around Cedar Island Lake at the time you took the Government plats and went to examine them?

A. I did not.

Q. Did you know at the time you looked the land that the fraction on the Cedar Island Lake were larger than they appeared to be on the Government plat?

A. Yes, I did. They were larger on the north side than they appeared to be on the Government plat.

Q. Did such excess occasion you any surprise or suspicion of any fraud in the survey?

A. No, sir, it did not.

Q. Is it or is it not usual and common that fractions adjoining lakes and meanders of rivers are often greater or smaller than appears by the Government plat?

A. It is.

Q. Did you note any other apparent excess or shortage in the lands purchased by Mr. Murphy at that time?

A. I did in T. 58-17 on section 31.

Q. Does any other occur to you?

A. Well, when we were examining land in the fall south of section 9, there was some shortages in the land there.

Q. Were these instances of excess or shortages?

A. Shortages on that in T. 58-17; shortages in that on section 9 T. 57-17. There was a lake that was not put on the plat at all, but was put on as lands by the Government, and we purchased them from the original owners.

Q. Did you, prior to the purchase being made by Mr. Murphy, include in your report to him or to Robinsin & Flinn any such excess or shortages in these lands?

A. I did not because it occurs so often that we don't pay any attention to it at the time when I make the reports.

Q. When did you first hear of alleged fraud in connection with the survey of Town 57 N. R. 17 W.?

A. I think some time in the fall or spring of 1894. I didn't ever know of any fraud until the settlers went in there that have gone on and made these claims now. It must have been about in 1892 or 1893. before I heard of any alleged fraud.

CROSS-EXAMINATION.

Q. (Fol. 360). Did you have the field notes with you of the Government survey?

A. (Fol. 361). Only the plat, no field notes.

Q. Was anything noted on that plat to show you the length of the boundary lines?

A. No, sir, there was not.

Q. Was there anything to show you the number of acres?

A. No, I didn't have the number of acres, only the number of lots.

Q. You had a copy of the Government plat?

A. Yes, but they didn't put that part on it.

Q. Who made it?

A. Mr. Cary was the Register, but I don't know who made it.

Q. Have you the original memoranda with you from which you made these reports?

A. I have not. I have them at home.

Q. If the copies transmitted by you to the plaintiffs can be found, are you willing that they may produce those originals?

A. As far as I know I think they can. I have not seen them for some time.

Fol. 373. Now, you say in answer to a question addressed to you on the examination in chief that at the time you went over these lands in Township 57, you thought the descriptions on the north side of the lake were larger than they should be?

A. Yes, I thought they were large lots, which we often find in Government surveys.

Q. They were particularly large lots, were they not?

A. I don't know that they were larger than some I have found in Government surveys.

Q. Well, what made you think they were large lots, Mr. Eveleth?

A. Well, the distance from the lake to the town line. The lots run to the town line from the lake with the exceptions of lot 8.

Q. Well, you had heard, hadn't you, that there were pretty large lots out there?

A. No, I didn't hear any such thing. If I had, I wouldn't have spent half a day looking up these lines. I supposed the survey was perfectly correct.

Q. Did you find any squatters or persons on there when you went there?

A. No.

Q. The reports and communications which you made to the plaintiffs in this suit, or to any one of them, respecting this land, prior to, and at the time of, the purchase, were in writing, were they not?

A. Yes, sir.

RE-DIRECT EXAMINATION.

Q. (Fol. 381.) You stated there was no acreage marked on the Government plat of these towns that you had?

A. There was no acreage marked.

Q. When you applied, as a usual thing, to the land office for Government plats, did you request them to include acreage?

A. I don't think that I did. Not as a rule.

Q. Why did you omit information relating to acreage?

A. They didn't put them on the plats.

Q. Was the acreage of any consequence to you. Was it land or timber that you were looking for?

A. It was timber.

Q. Was it for that reason that you omitted asking for the acreage?

A. Yes, for one reason. I don't think I ever asked for acreage, unless it is some piece that I am particular to make a survey on.

Q. Were the corners of the lots, quarter posts and meanders you found at and in the vicinity of the lake sufficient to establish the lots to your entire satisfaction?

A. Why, yes, for my purposes they were, and by my having the plat.

Q. Did the fact that these lots were large enter into the conclusion in your recommending the purchase of this timber?

A. It did not.

Q. In making your estimates, did you estimate closely each separate description

by itself before recommending this purchase?

A. Yes, we intended to do that.

Q. When you stated that the land about the lake that you estimated, included in the purchase, contained from 8 to 10 thousand feet to the acre, did you mean all the land or that merely on sections 3 and 4?

A. I meant that on 3 and 4 and that on 9 and 10, that came from the Graff & Little people.

Q. In your judgment what proportion of all the excess land all around the lake contained pine timber?

A. I should think about one-half of the excess contained timber.

MR. GEORGE O. ROBINSON, recalled and further cross-examined.

Q. (Fol. 393.) Did you find the report made to you by Mr. Eveleth of the estimate which he made when examining these lands prior to your purchase, and which I asked you to look for this morning?

A. Do you mean the estimate prior, or the report prior?

Q. The estimate.

A. Yes, I found these estimates.

RE-DIRECT EXAMINATION.

Q. (Fol. 396.) Were these statistical reports received by you prior to the closing of the purchase on the option you then held?

A. According to my recollection they were received subsequent to the purchase of the Graff & Little lands.

Q. On what did you rely on making the purchase of the Graff & Little tract?

A. On Mr. Eveleth's telegrams, which in brief stated the gross quantity of pine estimated on the entire Graff & Little tract, amounting to 43,000,000 feet of pine, which he thought was as good timber as we could get.

Q. Have you answered on cross- examination that the evidence showed an efficient survey, if any, what real evidence have you that the survey is irregular?

A. Hearsay evidence, and in looking over the maps of re-surveys lately reported to have been made.

Q. What evidence have you that the survey was fraudulent?

A. I have none whatever of any fraud in the original survey.

Q. In the tabulated statements of the woodsman's notes referred to in the cross-examination, is there any reference made to acreage?

A. There is not; our policy was to buy timber and not acres. We made no special count of the exact acreage.

RE-CROSS EXAMINATION.

Q. (Fol. 398.) Mr. Robinson, do you know when you did receive these reports from Mr. Eveleth?

A. (Fol. 399.) I don't recollect the exact date, but to the best of my recollection we received them after we had concluded the purchase of these lands.

Q. You received them before you made the purchase of the Nelson and Scott Griswold lands south of the lake, did you not?

A. I have no positive recolection of it, but I presume that we did.

Q. You say that you think that your information was obtained from telegrams sent by Mr. Eveleth to you after his investigation of the lands. Have you the tele-

grams received and which you referred to?

A. These are the telegrams. (Showing telegrams.)

Q. Will you please read them to the notary and have them incorporated in your deposition?

A. (Witness reads telegrams as follows:)

Duluth, March 10, 1883.

To Robinson & Flinn:

The Graff & Little tract will cut forty-three million good pine and is the best trade that can be made up here. What will I tell them. The other tracts are not good.

ERWIN EVELETH.

Fol. 399.

(Fol. 400.)

Duluth, Minn., March 31, 1883.

To Robinson & Flinn:

Location good. Best pine I have seen up here. If you want timber, take this. There are other parties waiting for it. It is very cheap lands at the price.

ERWIN EVELETH.

(Fol. 401.)

Duluth, Minn., April 1, 1883.

To Robinson & Flinn:

Parties do not want to give extension as there are others that stand ready to pay cash without looking soon as our time is up and as we have ten days after acceptance to close in. Can you not make it out. I think that if we were to pay some money so that they were satisfied they would give me time to go down and show you estimates which are forty-three million white pine 10 per cent. uppers. Don't fail as it is the best trade we will be able to make here. Answer.

ERWIN EVELETH.

PHILLIP M. GRAFF, being one of complainants' grantors in cha'n of title, testified as follows: commencing on fol 411:

Q. I will ask you where you reside, Mr. Graff?

A. Well, you might say that I reside here in Duluth, altho' I have a homestead.

Q. How long have you resided in St. Louis County, Minnesota?

A. I came here in 1879 or 1880 and have been more or less a resident here ever since, as I said before I have a homestead.

Q. What transactions, if any, did you have with Mr. Murphy in 1882?

A. I sold him quite a lot of timber in St. Louis County.

Q. Did you sell him anything else besides timber?

A. No, sir.

Q. I guess you don't exactly understand what I mean; did you sell him any timber lands?

A. We sold him some timber, some lands with timber on, we always figure timber lands by the estimate.

Q. Do you know where the lands were located? can you give a description of them?

A. I don't know as I could locate them specifically; they were in St. Louis County; the deed was made, I think, in the spring of 1883, that is the only transaction that we had with Mr. Murphy, Mr. Simon J. Murphy.

Q. Those were the only lands that you ever conveyed to him?

A. Yes, sir.

Q. Who united in this conveyance with you?

A. Mr. Little and wife and my wife and brother.

Q. Do you know the location of that land with relation to Ely Lake; do you know if any of it borders on the lake?

A. Yes, sir, because we figured on that relation with regard to banking logs.

Q. What was the basis of your sale of this land around Ely Lake that you sold to Simon J. Murphy in 1883; what was the basis of the purchase; what was the consideration?

A. The basis of purchase was on the estimate of timber, it was sold on estimate.

Q. As to this, were the lots bordering on the lake according to the Government plat?

A. We sold them as we received them, according to the Government plat.

Q. What was the limits of estimate on each parcel as to this boundary?

A. The timber was estimated on the boundary as given by the Government plat.

Q. What was the limits of estimate on each parcel as to this boundary?

A. The timber was estimated on the boundary as given by the Government plat.

Q. As running to the actual waters of the lake?

A. Yes, sir.

Q. At the time you sold this land to Simon J. Murphy, had you ever heard of any irregularity or fraud in the surveying of the land in that township?

A. No, sir, I never heard of anything of that kind.

Q. When did you first hear of anything of that character?

A. When suit was commenced with the settlers going in trying to set aside the survey and have it re-surveyed.

Q. How long ago was that?

A. Oh, that was—I don't remember the

exact date, I had no reason to mark the date; it was a few years ago; not over two or three I suppose.

Q. What personal examination did you make as to this title?

A. We had it looked up to see that there was a patent from the Government or that they had filed.

Q. What as to the boundaries of the land?

A. We went by the Government survey.

Q. Or the plat?

A. The survey and the plat.

Q. State whether or not you made a personal examination of the plat in the land office?

A. Yes, sir, I did.

THOMAS H. PRESNELL, in behalf of complainants.

Q. (Fol. 531.) Mr. Pressnell, state your age and occupation and where you reside?

A. I am 56 years old, live in Duruth and am Deputy Clerk of the United States Circuit Court.

Q. How long have you resided here?

A. In Duluth?

Q. Yes, sir.

A. Thirty years.

Q. State whether you know the complainants, Messrs. Murphy, Robinson & Flinn and Dorr?

A. I do.

Q. How long have you known them?

A. Mr. Murphy and Robinson & Flinn I have known since 1882 and Mr. Dorr for four or five years.

Q. State what, if anything, you had to

do with a purchase by Simon J. Murphy in 1883 of lands in sections 1, 2, 3, 4, 9 and 10, in township 57-17 west in this county, I think there were also some other lands in the township north?

A. As agent of Graff & Little I sold those lands to Mr. Murphy, through Robinson & Flinn.

Q. What, if anything, at that time did you—what information, if any, at that time did you give out to these parties with whom you dealt as to any irregularities in the survey in that township?

A. Nothing.

Q. What was the basis of the purchase?

A. The basis of the purchase was pine timber.

Q. The basis of the purchase was pine timber, you say?

A. Yes, sir.

Q. What other conversation was entered into at the purchase on the part of Robinson & Flinn and Messrs Murphy and Dorr?

BY MR. EVANS.

Q. If you know?

A. The negotiations were carried on with Mr. Eveleth, Mr. Erwin Eveleth. I had advertised those lands for sale and had them for sale and he came in my office one day and got an option on the lands. He had a map. I don't remember if he had it at the time he got the option or afterwards, but we looked over that map at the lake with reference to its being a good place to hold logs or something of that kind. I remember that at one time I had shown him the outlet or what was supposed to be the outlet as it showed on the map.

Q. You mean the Government plat?

A. Yes, sir, showing where the St.

Louis River ran there, the lower end of it and a little stream from the lake ran down to it, and where that stream left the lake was a claim owned by C. N. Nelson Lumber Co., I suggested to him that he would easily make an arrangement with the C. N. Nelson Lumber Company to get the use of that stream as an outlet for their logs on the St. Louis River. I don't recollect that we had very much conversation. Mr. Eveleth seemed to know the situation; all he wanted was the option.

Q. Was there anything said at that time about the riparian rights, the right to use the lake and control the outlet, between you and Mr. Eveleth?

A. I don't know as there was anything said, it was understood. For my part I don't know that I had any such conversation.

Q. No more than what you have stated?

A. No, sir.

Q. Did you have anything to do with selling to him this outlet of what you teen supposed to be the lake?

A. I did afterwards; I sold it and some lands north from there, that was another transaction.

CROSS-EXAMINATION.

Q. (Fol. 536.) You say that you had a map of the township?

A. (Fol. 536.) A Government plat.

Q. You had a government plat, was that a blue print of the Government plat?

A. No, it was a common copy generally used. Mr. Eveleth got it from the land office.

Q. Those were copies of the Government plat as filed in the Government land office?

A. I can't say.

Q. It was supposed to be?

A. The officers did not make plats just exactly as they were unless they were ordered to do so. They didn't put in fractions or acreage in common plats, just tracings of the land.

Q. So you could see the boundaries?

A. Yes, sir.

By M. H. Stanford:

Q. This plat had the location of the lake as shown on the Government plat and the streams?

A. Yes, sir.

The foregoing testimony of Elisha H. Flinn, George O. Robinson, Simon J. Murphy, Erwin Eveleth, Phillip M. Graff and Thomas H. Pressnell is not contradicted in a single particular, and no attempt has been made by the defendants to contradict a syllable of the testimony of either of these witnesses.

The Government land in question was patented by the Government, and the land described in such patents as according to the official survey of the said land returned to the General Land Office by the Surveyor General. The Government plat then, and now, of record in the United States Land Office represented these lands as bordering upon the lake. There is no body of water which the meander line would fit except the lake named in the plat, and showing the lake as a boundary. *These lands were not sold by the Government or by complainants' grantors by the acre; the Government sold each lot as an entire tract. Complainants grantors sold the several lots as an entire tract.*

When an assignment is made of a plat and a certificate of survey, the purchaser takes it subject to the risks of its containing a less quantity than is expressed on its face, and should it contain more he is entitled to it.

Kirwan vs. Murphy, 83 Fed., 275.
Vowles vs. Craig, 12 U. S., 8 Cr., 372 (3 L. Ed. 593-597).
Clark vs. Munyan, 22 Pick. 410.

Complainants purchased the land for the pine timber standing thereon, and for the riparian rights thereto; purchased it on the value of the timber estimated to the actual shores of the lake and for the riparian rights valuable to them, not only in connection with the timber standing on the ground which they purchased about the lake, but also to enable them to market a large amount of other timber then, and now, owned by them for which at that time there was no other practical route to market, and which at this time as well is a valuable right there being no other feasable route at the present time except by rail that can be used for marketing this timber. *They purchased the land on the estimate of their woodsmen, relying on the Government plat showing the lake as a boundary, and with no knowledge of any particular excess in the lots.*

The riparian rights which they intended to acquire by this purchase was an important consideration to them.

They purchased the land on Section 2 because

they supposed that the outlet of the lake was at that point.

The land and timber on the western border of the lake in Section 9 was purchased in order that they might control the lake in case they desired to dam the lake as a reservoir. Acquiring of the riparian rights was the controling fact with the complainants in the purchase of the land on Sections 2 and 9.

The fact is established beyond any question *that these complainants purchased and paid for every foot of the land here in controversy. That they purchased all of the valuable riparian rights which Cedar Island Lake affords.* In the face of these well established facts how can it for a moment be claimed that the complainants are not the owners of the land in dispute.

What standing would a private individual have with this Court who occupied the position and made the claim which the Government now asserts.

The Land Department of the United States has through its officers and agents caused this survey to be made; has accepted the report thereof, and the plat made in accordance with the survey; it has approved the plat and made it a public record upon which the world has a right to rely. It has sold the land according to this plat. And now, after the lapse of years, after complainants have bourne the burden of caring for this land, attempt to repudiate its contract and assert that by reason of neglect or unfaithfulness of its agents it has sold more land than it intended, and that innocent parties relying upon the representations of the Government, who

have paid for this property in good faith must, by reason of the unfaithfulness of the Government agents, stand the loss. As a matter of fact, and as disclosed by this record, the interest of the Government in this proceeding is only nominal. The money it would derive, if any, from a re-survey of this land would not pay for the printing of the record in this case. And these settlers who are referred to by defendants' counsel *they have no right which can be considered in this action. They are not parties, and cannot be made parties to this suit; and the Government owes to these settlers no duty, even though the land in controversy was unsurveyed Government land.*

Hutchings vs. Lowe et al., 15 Wall, 77 (21 L. 82).

Buxton vs. Traver, 130 U. S., 232 (32 L. 920).

Gonzales vs. French, 164 U. S., 338 (41 L. 461).

N. P. R. R. Co. vs. Smith, 171 U. S., 269 (43 L. 161).

Norton vs. Evans, 82 Fed., 804.

It would not for a moment be contended *that an individual through his agent could plat a parcel of ground and sell that ground according to such plat, and thereafter could raise a question of fraud or mistake on the part of its agents against subsequent purchasers of the land in good faith according to such plat.* Yet that is the position which the Government occupies in this case; its ostensible ob-

ject in this proceeding is to recover what to it is the value of a few paltry dollars, on the plea that its agents were mistaken or guilty of fraud, to the great injury and damage of the complainants who purchased the land in good faith, relying on the representations of the Government agents, paying the full value on an estimate of the timber on the land extending to the actual waters of the lake and the lake as a boundary. Paying at the time of the purchase for the facilities which the riparian rights furnished for lumbering purposes, and for the outlet to the lake and highway thereby furnished for the transportation of the timber to market.

The complainants being bona fide purchasers in good faith, this is a complete defense to the claims of the Government.

It is fully established by the evidence that the complainants are bona fide purchasers of the land in controversy and without notice, this would be a complete defense against the proposed survey on the part of the Land Department, even though there was fraud in the original survey and the Land Department had erroneously approved of the plat. A complete defense, even though this were an original proceeding on the part of the United States to cancel the patent.

U. S. vs. Cal. & Ore. Land Co., 148 U. S., 31 (37 L. 354-358).

Col. Coal & Iron Co. vs U. S., 123 U. S., 307 (31 L. 182 at 185).

U. S. vs. Winona & St. Peter R. R. Co., 165 U. S. 463 at 482 (41 L. 789 at 797).

U. S. vs. Marshall Silver Mining Co., 129 U. S., 579 (32 L. 734 at 738).

The case of *United States vs. California & Oregon Land Co.* An appeal from a decree of the United States Circuit Court of Appeals for the Ninth Circuit, affirming the decree of the Circuit Court for the District of Oregon, dismissing a suit in equity as to the defendant, the California & Oregon Land Company. This suit was brought by the United States against said company and other defendants for the forfeiture of lands of a wagon road grant in Oregon to the United States, and to set aside the patents issued for such lands.

Said Mr. Justice Brewer speaking for the Court:

> "The burden of complaint in this case is that the Circuit Court erred in restricting the scope of the inquiry. The Government sought to introduce testimony to show that the road was never in fact constructed as required by the act of Congress and also that the certificates of the Governor were obtained by fraud and misrepresentation as averred in the bill. But all of this testimony was excluded and the inquiry limited to the single question, whether the land company was a bona fide purchaser. (Page 37). The act of 1874, which took effect intermediate the first and second deeds from

the road company, provided that when the roads were shown by the certificate of the Governor of the State of Oregon, as in said act provided, to have been constructed and completed, patents for said lands should issue in due form to the state or its grantees. Now, it is familiar law that where jurisdiction is delegated to any officer or tribunal his or its determination is conclusive.

"U. S. vs. Arredondo, 31 U. S., 6 Pet., 691-729 (8 L. 547-561).

"It is an universal principle that where a power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only question which can arise between an individual claiming a right under the acts done and the public or any person denying its validity are power in the officer and fraud in the party; all other questions are settled by the decision made or the act done of the tribune or officer. (Page 43, citing a number of cases). The testimony shows that the purchaser knew nothing wrong in respect to the title or the proceedings of the road company or any official connected with the transfer of title. They knew that determination of the question as to the completion of the road was committed by the statute to the Governor of the state. They saw his adjudication upon that question, and it may well be held that they took all the active measures which under the circumstances they could be required to take when they ascertained that

the authorized official, and that official the chief executive of the state, had officially determined that the road was completed. There being nothing in the circumstances surrounding the parties to suggest a suspicion of wrong. Can it be that they can be adjudged derelict in diligence because they did not make a personal examination of the road and determine for themselves whether it was in its entire length complete so as to satisfy all the terms of the grant? *If a patent from the Government is presented, surely a purchaser from the patentee is not derelict and does not fail in such diligence and care as are required to make him a bona fide purchaser because he relies upon the determination made by the land official of the Government in executing the patent and does not institute a personal inquiry into all the anterior transactions upon which the patent rested."*

The facts in the case and the question of good faith and bona fide purchase correspond to the circumstances under which complainants in the case at bar purchased the land.

On page 42 says Justice Brewer:

"The purchase was made by a party of gentlemen living in California, in the spring and fall of 1874. The first purchase being of an undivided one-half and the second purchase of the remaining moiety. Ten persons were named as grantees in the first deed and eleven in the second, some of whom were also grantees in the first. The title remained thus distributed among these several individuals until 1877, when for convenience in the care and sale of the property, they all united in a conveyance of their respective

interests to the California & Oregon Land Company of which they were stockholders. * * * * * * *

"More than half of the parties interested in the purchase died before the taking of testimony in this suit. The survivers were all called as witnesses and each for himself testified as strongly as language could make it that his purchase was made in good faith, that he had no knowlelge of any defect in the title. There was no opposing testimony, and if the question be one of simple fact there can be no doubt that the parties were bona fide purchasers within the rule laid down in Second Pomeroy's Equity Jurisprudence, Sec. 745, to-wit:

" 'The essential elements which constitute a bona fide purchase are therefore three: a valuable consideration, the absence of notice and presence of good faith. * * * * * *'

"In this connection it is worthy to notice that the purchasers, when their attention was called to the fact that this property was for sale, sent an agent to Oregon to examine into the matter. While such agent is dead, and what he ascertained is not offered, yet it does appear that, to the survivors at least of the purchasers, he brought no intimation or suggestion of any defect in the title to the land." (P. 42).

In principle, there is no difference between the case at bar and this. In the case at bar the complainants relied upon the decision and action of the Land Department of the United States and the record it had made, and purchased land for the timber thereon and the riparian rights which the purchase afforded by the lands bordering on the

actual waters of the lake, and the plea that they are bona fide purchasers furnished a complete defense.

In Colorado Coal & Iron Co. vs. U. S., 123 U. S., 307 (31 L. 182).

From the opinion of Justice Mathews speaking for the Court:

> "It is fully established that there were in fact no actual settlements and no improvements on any of the lands, as falsely set out in the affidavits in support of the pre-emption claims and in the certificates issued thereon. This undoubtedly constitutes a fraud upon the United States sufficient in equity as against the parties perpetrating, or those claiming under them with notice of it to justify the cancellation of the patents issued to them, but it is not such a fraud as prevents the passing of the legal title by the patents; it follows that, to a bill in equity to cancel the patents upon these grounds alone, the defense of a bona fide purchase for value without notice is perfect.
>
> "In this case there were fourteen persons examined as witnesses, in the first place in respect to several tracts of land in controversy for facts that they had not been settled upon and that no improvements had been made upon them by any one; that they were acquainted at the time of the transactions with the people then living in Las Animas County, some of them stating that they knew every white man at that time residing therein. That, with the exception of one man named Martin, there were no persons in the county at the time bearing the names specified as pre-emption claimants and no persons bearing the names sub-

scribed as witnesses to their statements; and they never saw or heard of persons residing in the county having such names. There is no proof to connect the Register and Receiver with such a conspiracy, but that the affidavits purport to have been made before them and were certified by them. Hunt's connection with it rests upon the fact that he procured deeds from the supposed grantees conveying the land to Jackson in pursuance of a bargain with him. It may well be admitted that if there were no actual persons who made application as pre-emption settlers, none who made and signed the necessary documents and affidavits, and no persons as witness who attested the same, the register and recorder must have known the facts. But the fact of the conspiracy depends upon prior proof that the alleged transactions were mere fiction. Proof necessary to justify that conclusion is supposed to be found in the facts testified to by the witnesses, a summary of which has been given."

I call the Court's attention to this case in particular by reason of the facts which strongly tend to support the allegation of fraud on the part of certain stockholders of the defendants corporation and, notwithstanding the strong circumstantial proof, the Court held it not sufficient to overcome the presumption in favor of the claimants under the patent title.

What does this record disclose upon which the defendants can charge want of good faith on the part of the complainants in purchasing the land? Good faith is held to be the opposite of fraud. It means with an honest purpose.

Docter vs. Furch, 91 Wis. 461.
McConnell vs. Strett, 17 Ill. 253.
Winter vs. Haines, 84 Ill. 585.
Thomas vs. Sioux Falls National Bank, 150 U. S. 240.
Morgan vs. Hazelhurst Lodge, 53 Miss. 683.

Justice Brewer in U. S. vs. California & Oregon Land Company, Supra., concisely states the rights of the complainants in this case in that respect: "If a patent from the Government is presented, surely a purchaser from the grantee is not derelict and does not fail in such diligence and care as are required to make him a bona fide purchaser because he relies upon the determination made by the land official of the Government in executing the patent, and does not institute a personal inquiry into all the anterior transactions upon which the patent rested." * * * I quote further from his opinion in this case: "The survivors were all called as witnesses and each for himself testified as strongly as language could make it that his purchase was made in good faith, that he had no knowledge of any defect in the title. There was no opposing testimony. And if the question be o- of simple faith there can be no doubt that the parties were bona fide purchasers."

In the case at bar the testimony of all of the complainants who had anything to do with the original purchase of this land, is as positive and definite as to the purchase of the land in good faith as language could make it.

The same is true as to the question of notice. It is very clear from the language of Justice Brewer, just referred to, that there was nothing in the circumstances of this case which made it the duty of the complainants to inquire into the regularity and accuracy of the survey. And while we now insist, as we always have done, that the question of the inaccuracy of the survey is immaterial—that the question of excess in the acreage in the fractional lots is immaterial—yet if it were a proper subject of inquiry before this court, there is absolutely nothing upon which the claim of notice can be based, and the testimony of the complainants and of the witnesses Graff, Pressnell and Eveleth negatived any claim of actual notice.

IV

A patent for land is the highest evidence of title and is conclusive as against the Government and all claiming under junior patents of title, until set aside or annulled, unless it is absolutely void on its face.

U. S. vs. Stone, 2 Wall., 525 (17 L. 765).

Hooper vs. Scheimer, 23 How., 235 (16 L. 452).

Johnson vs. Towsley, 13 Wall., 72 (20 L. 485).

Gibson vs. Chouteau, 13 Wall., 92 (20 L. 534).

U. S. vs. Throckmorton, 98 U. S., 61 (25 L. 96).

Warren vs. Van Brunt, 19 Wall., 646 (22 L. 219).

Mahn vs. Harwood, 112 U. S., 354 (28 L. 669).

St. Louis Smelting and Refiining Co. vs. Kemp, 104 U. S., 636 (26 L. 875).

It will not be claimed for a moment that the several patents are void upon their face; what then would be the result of the making of a re-survey? The Government would have no authority to sell any portion of this land again, it could convey no title, yet in making the survey its avowed purpose is to sell and patent a portion of complainants' land. No other result could follow this act than a multiplicity of suits; and the complainants being the owners of the land in question, the Circuit Court had ample authority to enjoin an act which would cast a cloud upon the title of complainants' land, and which would also cause a multiplicity of suits.

It is evident that it was the intention of the Government when it placed this land upon the market and offered it for sale according to the official plat of the township, to sell these fractional lots and convey them to the patentees with the lake as a boundary. I is certainly conclusively established that the complainants when they purchased this property intended to obtain and for that purpose paid for the riparian rights which these lots bordering on the lake afforded. The intention of the

parties, therefore, is manifest; and *it is a fundamental principle of construction of deeds and patents, that the intention will control without regard to mere technical or artificial rules of construction.*

Witt vs. St. Paul & N. P. Ry Co., 38 Minn., 122, 127.

Austrian vs. Davidson, 21 Minn., 117.

Everett vs. Continental Insurance Co., 21 Minn., 76.

Driscoll vs. Green, 59 N. H. 101.

Crafts vs. Hibbard, 4 Met., 438, 452.

Jackson vs. Marsh, 6 Cow. 281; 2 Devl. Deeds Sec. 851, 1033.

Cannon vs. Emmans, 44 Minn. 298.

Moran vs. Lezotte, 54 Mich. 90.

R. R. Co. vs. Stigler, 61 N. Y. 348, 351.

It is an universal rule that courses and distances yield to natural and ascertained objects.

Newsom vs. Priors Lessee, 7 Wheat., 8 (5 L. 382).

Barclay vs. Howell's Lessee, 6 Pet., 498.

Preston Heirs vs Bowmar, 6 Wheat., 580 (5 L. 336).

Brown vs. Huger, 21 How., 62 U. S., 305 (16 L. 129).

Morrow vs. Whitney, 95 U. S., 551 (24 L. 456).

Bartlett Land & Lumber Co. vs. Saunders, 103 U. S., 316 (26 L. 546).

Ayers vs. Watson, 113 U. S.,'594 (28 L. 1093).

St. Clair County vs. Lovingston, 23 Wall., 46 (23 L. 59).

Yanish vs. Tarbox, 49 Minn., 268 at 277 (51 N. W. R. 105).

V

This survey cannot be questioned in this proceeding.

On previous hearings of this case the defendants have stated that it is a conceded fact that the interior of this township has never been surveyed. It is possible that defendants' counsel may assume that position before this Court. We now most strenuously deny, as we have always denied, this assumption. It is established in this case and undisputed that a survey of this township was made; and if the words used in the stipulation of fact amounted to an express admission that no survey of this township was ever made, this Court would not be relieved from the consideration of this question. In the language of Justice White who delivered the opinion of the Court in the case of Stoneroad vs. Stoneroad, 158 U. S. 247, (39 L. 968); "This admission is in no way the concession of a fact, but is a declaration by the suitors of this opinion on a matter of law."

The following are the established facts and un-

disputed, and from these facts the Court will determine as a matter of law that a survey of the township and of this land was made.

The Court will observe that it is alleged in the bill, commencing at Fol. 6 of the Printed Record, that a contract was duly made by the Government for the survey of this township with one Henry S. Howe, as Deputy Surveyor of the United States, bearing date April 26, 1876; that all of the lands in said township were surveyed; that it was completed on the 30th day of June, of the same year, and the record of the survey and the field notes were duly approved by the Surveyor General of the United States. That from the field notes of the survey the plat of said township was duly made by the Surveyor General and submitted to the Commissioner of the General Land Office of the United States for his approval. That on the 11th day of June, 1879, the Commissioner of the General Land Office approved of the plat, and the plat was thereupon filed and recorded in the office of the Surveyor General of the United States for the District of Minnesota, and thereupon became and ever since has been and now is the official Government plat of said township; that after the approval and recording of said plat, and before the sale and disposal of any lands in said township, a duly certified copy of said official plat was made and filed in the office of the Commissioner of the General Land Office of the United States at Washington, D. C., and in the local Land Office at Duluth, Minnesota, that being the land district in which the lands were situated. That after the filing of the copies of said

plat, and prior to April 1, 1887, all of the lands in said township were sold and disposed of by the Government of the United States according to the said official Government plat, and patents of said lands were duly issued therefor to the several purchasers thereof, according to said plat. The bill then avers that there are certain inaccuracies in the survey; the defendants allege in their answer as though it were alleged in the bill, which it was not, that the survey was fraudulent; that Howe fraudulently made and filed pretended field notes of the survey. The defendants then allege that a plat was thereafter made and approved by the Surveyor General of the District; that the Commissioner of the General Land Office approved of the survey and plat Fol. 109 Record; that a copy of the official plat of the township is attached to the bill, Ex. "A" page 15, Record. Defendants by their answer admit that this is substantially a correct copy, Fol. 110-111, Answer. A copy of the field notes of the Howe Government survey was offered in evidence, commencing at Fol. 607, page 203 Record; the Government plat of the township, complainants' Ex. "A," was also offered in evidence. Both the plat and the field notes were received without objection, Fol. 561 Record. In the stipulation of facts (Fol. 301-302 Record) it is stipulated that there is no evidence upon the ground that any actual survey of Township 57 was ever made by said Howe. The Court will note the language "no evidence on the ground."

It therefore appears a sa conceded fact that a survey was made, field notes returned, plat made and approved and filed in the proper offices, and

the land sold according to this Government plat. And, under the same stipulation of facts in Fol. 309, it is admitted that prior to the commencement of this suit, the United States had patented according to the Howe survey, which is the only Government plat of said township, all the fractional lots in said township reported in the field notes returned by said Howe, and all other land in said township outside of the meander line of Cedar Island lake shown by the field notes and plat of the said Howe survey had been patented by the Government.

It is admitted that there is no evidence on the ground that any meander line of said lake was ever surveyed by said Howe, or any meander posts set out by him about the lake, except one where the North line of said township encounters said lake As a matter of fact meander lines are seldom run on the ground. It is admitted in subdivision IX of the stipulation of facts (Fol. 309) that the complanants are the grantees and holders by mesne conveyance from the patentees of the record title to the fractional lots, which the complainants in their bill allege they purchased and are the owners of.

It is an established fact in the case that the complainants purchased the land in good faith relying upon the Government plat, with no knowledge of any inaccuracies in the survey; paying for the land on an estimate of the timber to the actual waters of the lake, and for the riparian rights which the lake afforded.

Under such a *state of facts, we maintain that this survey is not open to challenge. That the*

Government of the United States is estopped from disputing the accuracy of this survey.

All lands are supposed to be actually surveyed.

White vs. Burnley, 61 U. S. (20 How.) 235 (15 L. 886).

McIver's Lessees vs. Walker, 9 Cranch, 178 (3 L. 696).

Newsom vs. Priors Lessees, 7 Wheat., (5 L. 382).

A.

The doctrine is general that when the law has confined to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority is conclusive upon all others.

Marbury vs. Madison, 5 U. S., 1 Cranch, 170 (2 L. 71).

Johnson vs. Towsley, 80 U. S., 13 Wall., 72 (20 L. 486).

Cragin vs. Powell, 128 U. S., 691, 699 (32 L. 566-8).

Knight vs. U. S. Land Ass'n, 142 U. S., 161 (35 L. 974).

Stoneroad vs. Stoneroad, 158 U. S., 240 (39 L. 970).

Russell vs. Maxwell Land Grant Co., 158 U. S., 253 (39 L. 971).

U. S. vs. Cal. & Ore. Land Co., 148 U. S., 43 (37 L. 360).

U. S. vs. Marshall Silver Mining Co., 128 U. S., 43 (32 L. 574, 576).

U. S. vs. Marshall Silver Mining Co., 129 U. S., 579, 589 (32 L. 737, 738).

Uhl vs. Reynolds, 64 S. W., (Ky.) 498 at 500.

Said Judge Brewer speaking for the Court in United States vs. California & Oregon Land Co., at page 43:

> "Now, it is familiar law, that when jurisdiction is delegated to any officer or tribunal, his or its determination is conclusive."

Again, it was held in this Court in Menards Heirs vs. Massey, 8 How. 292, 314 (12 L. 1085 at 1073) which arose under an old Spanish concession and a title otherwise acquired, that when it (the survey) was made, and the field notes returned to the Surveyor General's office and the description and plat made out in form and approved by the Surveyor General, it was conclusive evidence as against the United States that the land granted by the confirmation of Congress was the same described and bounded by the survey, unless an appeal was taken by either party, or on applying to the Commissioner of the General Land Office.

This consideration depends on the fact that the

complainants and the United States were parties in the selection of the land. As they agreed to the survey, they were mutually bound and estopped by it. This is affirmed in:

Gutard vs. Stoddard, 16 How., 512 (14 L. 1038).

City of Carondlet vs. City of St. Louis, 66 U. S., (1 Black 179) (17 L. 106).

Dent vs. Emmeger, 81 U. S. (14 Wall. 308) (20 L. 838 at 839).

Russell vs. Maxwell Land Grant Co., 158 U. S., 253 (39 L. 971).

and other cases in this subdivision.

The case of *Cragin vs. Powell*, 128 *U. S.*, 691 *to* 700 (32 *L.* 566) is a case on all fours with the one at bar regarding the conclusiveness of the Government survey. In this case the original Government survey was made in 1837, by one G. W. Connelly, as part of the public domain, and the plat of such survey was filed in the United States Land Office of the District. In 1844 the United States issued to one Bach patent to ascertain portions of this land in Sections 10, 15 and 22 according to the official plat of the survey of said lands returned to the General Land Office of the United States by the Surveyor General. The appellant was the owner of the land thus patented to Bach. In April, 1874, one Samuel Wolf purchased from the State of Louisiana portions of the same Sections, 10, 15 and 22, and also portions of Sections 14 and 23, same township, all joining the lands of the appellant.

These lands last described were given to the state as swamp lands and were noted as such on the official plat above referred to. By the Connelly plat a bayou known as Bayou Four Points is located on appellants' land. The appellees claiming under the Wolf patent offered to prove, and did prove, that the original Government plat was inaccurate, and claimed that the appellants' land was not in fact situated on Bayou Four Points; that there was a strip of Government land left unsurveyed which did not pass to appellants' grantors and was claimed under the Wolf patent from the State. Said Justice Lemar who wrote the opinion of the Court:

> "Whether the official survey made by Connelly is erroneous or should give way to the extent of its discrepancies to the survey reported by McLeran, is a question which was not within the province of the Court below, nor is it in the province of this Court to consider and determine. The mistakes and abuses which have crept into the official surveys of the public domain form a fruitful theme of complaint in the political branches of the Government. The correction of these mistakes and abuses has not been delegated to the judiciary, except as provided by the act of June 14, 1860, in relation to Mexican land claims which was repealed in 1864. From the earliest days matters appertaining to the survey of public or private lands have devolved upon the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. Revised Statutes, Sec. 453. * * *
>
> "The making of re-surveys or corrective surveys of townships once proclaimed for

sale is always at the hazard of interfering with private rights and thereby introducing new complications. * * * * * * *

"That the power to make and correct surveys belongs to the political department of the Government, and that, whilst the lands are subject to the supervision of the General Land Office, the decisions of that bureau in all such cases, like that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable by the Courts, except by direct proceeding; and that the latter have no concurrent or original power to make similar corrections, if not an elementary principal of our laws is settled by such a mass of decisions by this Court that its mere statement is sufficient." (Then follows a long line of cases.)

Cragin vs. Powell is expressly affirmed in Knight vs. Land Ass'n, 142 U. S., 161 (35 L. 974) and again in Stoneroad vs. Stoneroad, 158 U. S., 248 (39 L. 969) and Horn vs. Smith, 159 U. S., 40 (40 L. 68) and French Glenn Live Stock Co., vs. Springer, 22 Sup. Rep., 566.

The direct proceedings referred to as is stated in Col. Coal & Iron Co. vs. U. S., 123 U. S., 307 (31 L. 182) and in U. S. vs San Jacinto Tin Co., 125 U. S., 273 (31 L. 751), the Court said of these transactions:

"When fraud is alleged and conclusively established that they undoubtedly constituted a fraud upon the United States sufficient in equity as against the parties perpetrating it or those claiming under them with notice of it to justify the cancellation of the patent issued to them; but not

> against a bona fide purchaser for value without notice, and in no case except by proceeding in equity on the part of the Government to cancel the patent."

And in *U. S. vs. Minor,* 114 *U. S.*, 233 *at* 244 (29 *L.* 110 *at* 114).

> "Where the patent is the result of nothing but fraud and perjury, it is enough to hold that it conveys the legal title, and would be going quite too far to say that it cannot be assailed by a proceeding in equity and set aside as fraud, if the fraud is proved and there are no innocent holders for value."

This was a suit in equity by the United States against the patentee to set aside and anul a patent.

Indeed it would be an unheard of proposition *that a person in no way connected with the fraud and without notice that one had been perpetrated, who purchased the property in good faith and for a valuable consideration, could be deprived of it on the ground that fraud had been perpetrated on the Government in making the survey.* The Court will remember that neither the patentees nor the complainants or any of the grantees in the complainants' chain of title, are charged with fraud in the original survey, or any notice or knowledge that a fraud was perpetrated. Neither are they charged with any notice or knowledge that there was a mistake in the original survey.

The testimony is conclusive that the complainants purchased the land in good faith, paying for it on an estimate of the timber on the land running

to the actual waters of the lake relying on the Government plat; and that a controling consideration which induced the purchase by them was the riparian rights which they acquired by reason of the land being bounded by the actual waters of the lake.

In *U. S. vs. Marshall Silver Mining Co.*, 129 *U. S.* 579 *to* 598 (32 *L.* 734 *at* 738) this Court held:

> "That where one of the defendants in an action to set aside a patent issued by the United States Land Office is an innocent purchaser of the property, the patent will not be set aside."

And in *U. S. vs. San Jacinto Tin Co.*, 125 *U. S.* 273 (31 *L.* 747 *at* 752). where a suit is brought by the United States to benefit one or two claimants to land, the Government has no pecuniary interest in the matter and the suit must fail.

And in *U. S. vs. Beebe*, 127 *U. S.* 388 (32 *L.* 121 *at* 125) this Court held that the United States may sue to set aside a patent for land obtained by fraud or mistake, only when the Government has an interest of its own to protect, or it is under obligation to some individual to make his title good by setting aside the fraudulent title, or its duty to the public requires such action. Again,

> "We are of the opinion that when the Government is a mere formal complainant in a suit, not for the purpose of asserting any public right or protecting any public interest, title or property, but merely to form a conduit through whom one private person can conduct litigation against another private person, a Court of Equity will not be re-

> strained from administering the equities existing betwee nthe real parties by any exemption of the Government designed for the protection of the rights of the United States."

White vs. Bunly, 20 How., 235 (15 L. 889) the Court says it is probable no actual survey was made on the ground and hence it appeared that the surveyor's certificate that more than one-half of the boundary shown on the plat was covered by water.

B.

Russell vs. Maxwell Land Grant Co., 158 *U. S.*, 259 (39 *L.* 973). Judge Brewer in closing his opinion in this case used the following language:

> "In this connection it may be well to notice a distinction which interprets some dicta and decisions found in respect to the jurisdiction of Courts over boundaries. Whether a survey as originally made is correct or not is one thing, and that as we have seen, is a matter committed exclusively to the Land Department, and over which the Courts have no jurisdiction otherwise than by original proceedings in equity. While on the other hand, where the lines run by such survey lie on the ground, and whether any particular tract is on one side or the other of that line, are questions of fact which are always open to inquiry in the courts."

In the case before us the offer was not to show

that the land in controversy was on one side or the other of the line established by the survey. On the contrary, it was conceded that it was within the limits of the survey, and the offer was simply to show that the survey was inaccurate and that the lines should have been run elsewhere, but this is not a matter for inquiry in this collateral way in the Courts.

Again, in *Horn vs. Smith* there was two water lines before the Court, both on the ground; and the question was which of these water lines constituted the boundary, the bayou or the main body of the river. Said Justice Brewer speaking for the Court, page 43 (Law. Ed. page 70).

> "That a water line runs along the course of the meander line cannot, of course, in the fact of the plat and survey, be questioned; but that the meander line of the plat is the water line of the bayou rather than that of the main body of the river is evident from these facts."

It will be noticed that Justice Brewer in his opinion expressly declares *that the meander line cannot in the fase of the plat and survey, be questioned; but the Court is bound to presume that the water line runs along the course of the meander line.* This accords with the distinction which Justice Brewer points out in Russell vs. Maxwell Land Grant Co., that the correctness of the survey cannot be questioned by the Courts, except by original proceeding, to which we have heretofore referred, and is in harmony with all the decisions of this Court.

In the case at bar it is admitted that the lines which defendants dispute do not lie upon the ground; and the defendants' contention is that they were never run. *The boundary line they dispute is plain and open to be seen; they do not seek to show that the tract should be on one side or the other of the actual shore of the lake, but that the line described in the survey, that, is the lake shore is inaccurate.* This is an attempt to do what Justice Brewer has so clearly and concisely held they cannot do.

If it were competent for the defendants to show in this action that no survey of said township was ever made by the Government, as they insist upon the right to do, and the fact was established, as they claim it has been, that the township never in fact was surveyed, if such proof were admissible and the fact was established, there would not be one foot of ground in this township which the Government has patented which does not at this time belong to the Government of the United States. If their contention is true on the law and the fact, then the Government of the United States may today maintain an action for every ton of ore which has been removed from any portion of the land in this township, which it has assumed to patent, and for every foot of timber which has been cut and removed by the parties claiming to own such by virtue of such patents. If such contention is true, it does not relate to the land only which lies between the meander line of Ely Lake and the actual waters thereof, but it must extend to every piece of land which the Government of the United States has heretofore patented in this township...

VI.

One Officer of the Land Department cannot cancel or annul an act of his predecessor so as to effect private rights.

The action of the Commissioner of the General Land Office in ordering the survey in question is, in fact,, a cancellation of the order of his predecessor in approving of the survey and official plat. It is in effect the re-forming of the patents which his predecessor ordered issued in behalf of the Government, and by such reformation of the patents taking from the complainants a considerable portion of the land and a valuable privilege which the riparian rights to such lands represent.

It is a well settled rule promulgated by this Court and re-affirmed in every instance where the question has come before it, so far as I am able to learn, that one officer of the Land Department is not competent to cancel or annul the act of his predecessor. Most of the cases which we have cited in this brief declare this proposition either direct or by inference. The following are a few of the cases in which the question has been expressly passed upon:

Stone vs. U. S. 69 U. S., 2 Wall., 525 (17 L. 767).

Moore vs. Robbins, 96 U. S., 6 Otto., 530 (24 L. 850).

Noble vs. Union River Logging Co., 147 U. S., 165 (37 L. 123 at 127).

In the last case cited, the Court used this language:

> "That if the right of way were obtained by fraud, a bill would undoubtedly lie by the United States for cancellation and annulment of the approval thus obtained, but that a revocation of the approval of the Secretary of the Interior by his successor in office was an attempt to deprive the plaintiff of its property without due process of law.
>
> "And the decree enjoining the Secretary of the Interior and the Commissioner of the General Land Office from executing the order revoking was affirmed."

All of these cases hold, and it has been so decided by this Court as often as the question has come before it, that the meander line is not the boundary, but that the body of water whose margin is meandered is the true boundary.

VII.

RIPARIAN RIGHTS.

It has been contended by the complainants in the previous hearings of this case, that the subject of riparian rights was not a question in this case, and that the authorities cited related to accretion and reliction, and, therefore, have no application to the case at bar. All of the cases which we have cited by this Court on the question of boundaries have held against this contention of the appellants.

Accretion and reliction are goverened by the same principles as other rights of riparian ownership, that is, the right of access to the water. It is in order to make the right of access complete and available that the right of accretion or reliction is allowed. Accretion and reliction stand on no different ground than the rights of the complainants in the case at bar.

In re Delinquent Taxes St. Paul & Duluth Ry. 84 N. W. (Minn.) 302.

Lampry vs. State, 52 Minn., 98.

G. R. & I. Ry. Co. vs. Butler, 159 U. S., 87 (40 L. 85).

Hardin vs. Jordan, Supra.

And cases cited in Minnesota.

In the case of *Lewis vs. Pierce*, 18 *L. Decision*, 328, decided in 1894 by Secretary Lemar where a survey was denied. In a similar case the Secretary gives the following reasons for his refusal:

> "In the appeal under consideration, however, it is claimed that the land in question cannot be an accretion, as timber is growing thereon more than 100 years old, (the survey was made in 1845) that there must be a mistake in the original survey, and to ascertain the facts a hearing is desired. To admit that there was a mistake in the original survey could not to my mind alter the case, for it is not claimed that even if a mistake has been made Gleason was in any wise responsible for it, or that it was made through his connivance. He made en-

> try fifteen years after the survey of 1845, and his contract with the Government was based upon the recognized plat then on file This assured him of a water front, and undoubtedly this fact influenced his selection of the land. This being so, no subsequent survey can deprive him of his frontage on the water."

This case is on all fours with the one at bar, and we submit that here, as in the Pierce case, the complainants are entitled to their frontage on the water. And an attempt to distinguish this case from the general doctrine announced by this Court is futile.

The reasons stated by Mitchell, Justice in Lamprey vs. State, 52 Minn., 192 at page 197, in relation to accretions and relictions, could not more clearly state the situation of the parties in the case at bar. It is as follows:

> "The incalculable mischiefs that would follow if a riparian owner is liable to be cut off from access to the water, and another owner sandwitched in between it and him, whenever the water line has been changed by accretion and relictions, are self-evident and have been frequently animadverted on by the Courts. These considerations certainly apply to riparian ownership on lakes as well as on streams. Take the case in hand of our small inland lakes, the waters of many of which are slowly but gradually receding. The owners of lands bordering on them have often bought with reference to access to water, which usually constitutes an important element in the value and desirability of the land. If the

rule contended for by the appellants is to prevail it would simply open the door for prowling speculators to step in and acquire title from the state, to any reliction produced in the course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to the water. The endless litigation over the location of the original water lines, and the grevious practical injustice to the owner of the original riparian estate that would follow, would of themselves be a sufficient reason for refusing to adopt any such doctrine. That the state would never derive any considerable pecuniary benefit, certainly none that could at all compensate for the attendant evils, we may in the light of experience safely assume. Our conclusion, therefore, is, that upon both principle and authority, as well as consideration of the public policy, the common law is, that the same rules as to riparian rights which apply to streams, apply also to lakes or to other bodies of still water."

Said Justice Bradley in Mitchell vs. Smale, Supra:

"We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants of the tracts of such lakes after selling the land bordering thereon, or represented to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable of the grant."

Chief Justice Fuller in *Grand Rapids & Indi-*

ana Railroad Co. vs. Butler, 159 *U. S.,* 87 (40 *L.* 85), in a suit to quiet title, speaking for the Court, quotes with approval the language of Justice Bradley in Harden vs. Jordan, Supra.:

> "We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants of the bed of such lakes, after selling and granting the lands bordering thereon, or reported to be. It is nothing more nor less than taking from the grantee a most valuable part of his grant. Plenty of speculators will always be found as such property increases in value, to enter it and deprive the proper owner of its enjoyment. And to place such persons in possession under a new survey of the grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned."

This was a case in which Butler who claimed title on an original survey to an island in Grand River which did not appear in the original survey. In the state of Michigan the land of the riparian owner extends to the thread of the stream in non-navigable waters. This island was on Butler's side of the stream, it passed by the original grant and a subsequent survey by the Government of this island, and the patent issued by the Government to the railroad company did not divest Butler of his title.

If there was no proof that the lands were purchased by the complainants in reliance on the riparian rights disclosed by the plat, the question of

riparian rights would still be a controlling element in this case.

Said Chief Justice Marshall in Newsom vs. Pryor's Lessee:

> "Generally speaking, it is the particular intention of the purchaser to acquire the land lying on the stream called for, as being more valuable than other land."

Said Justice Swayne in *St. Clair County vs. Livingston*, 90 *U. S.*, 23 *Wall.* (23 *L.* 63.)

> "There was an obvious advantage in having the entire front of the land extend to the waters edge."

It would seem unnecessary to dwell on this question of riparian rights, or to speak further of the attempt on the part of the defendants to eliminate it from the case. The rule is well settled by an uninterrupted line of the decisions of this Court, from its earliest history to the present time, that the owner of lands bordering on navigable waters is entitled to and does hold riparian rights therein.

VIII.

The Survey and Plat having been approved and the land sold, the Plat cannot now be questioned.

The Howe survey and plat was approved by the Commissioner of the General Land Office.

Prior to such approval the land in question was unsurveyed land of the United States. In approving of the survey and of the plat, the officers of the General Land Office exercised their judgment and discretion. It was a power conferred on them by congress.

The land was sold and conveyed according to such official plat. In offering this land for sale and in the sale and conveyance thereof, it then being public lands of the United States, and at the disposal of the Land Department, the officers of the land department acting within the scope of their authority and in the exercise of their judgment and discretion, as delegated to such officers by act of Congress, their decision is conclusive upon all others. Cases cited, also see:

Johnson vs. Towsley, 80 U. S., 72.
U. S. vs. Schurz, 102 U. S., 378-401.
Cragin vs. Powell, 128 U. S., 693.
French Glenn Live Stock Co. vs. Springer, 22 Supra R., 566 and Cases cover cited in substance 2 page 15 & 16 of this brief.

IX.

Complainants Exhibit D. attached to the bill correctly delineates the location of Cedar Island or Ely Lake.

The defendants on previous hearings of this case have, in the face of the undisputed facts, assumed that the location of the lake was different

from that shown on complainants Exhibit D., There is no controversy either in the pleadings or proof as to the location of the lake.

It is alleged in the bill "that the actual boundaries of Cedar Island Lake are as represented on said Exhibit D, surrounding the words 'Cedar Island,' " and this exhibit is made a part of the bill.

Folios 12 and 13, page 5 Printed Record; Plat, Ex. D., page 16 Printed Record.

This is not denied in the answer.

The answer alleges that Exhibit B. attached to the answer represents the true relative size and contour of the lake, but no reference is made to its location.—Fol. 113 Printed Record.

Complainants' Exhibit B. attached to page 73 Printed Record.

The plat Exhibit B. has been assumed as the location of the lake by the defendants in their argument, but there is absolutely no evidence to support it. In 1894 the County Surveyor of St. Louis County, Minnesota, pursuant to the order of the Board of County Commissioners of that county, made a survey of the two northern tiers of sections of this township for the purpose of re-establishing the interior lines and corners. For the petition and order see page 255-6 Printed Record; and the field notes of said survey, page 240 Printed Record. These were introduced in evidence at Fol. 509, page 170.

This survey is known as the Patton or County Survey.—Fol. 509 Printed Record.

Survey is ordered by the Board of County

Sommissioners of St. Louis County, pursuant to section 697, Annotated Statues of 1894, which section is as follows:

COMMISSIONERS TO RE-ESTABLISH SECTION AND MEANDER POSTS.

The Board of County Commissioners of any county where it shall be made to appear to their satisfaction at any regular or special meeting, that the section, quarter section or meander posts or monuments established by the United States have been destroyed, or are becoming obscure, shall have power to authorize and direct the County Surveyor of the County to re-survey, re-locate and re-establish such section, quarter section or meander posts or monuments, by having permanently placed at such Government corners an iron or stone or wood post or monument, of a durable character, of such size and construction as in their discretion may be deemed desirable. In making such survey the said County Surveyor shall keep full and accurate notes thereof, and shall file a certified copy of the same in the office of the Register of Deeds of said county. And the points where said posts or monuments are relocated and reestablished, as aforesaid, shall be taken and considered as prima facie evidence that such points are the points where the section posts or monuments were established by the United States Government."

The correctness of the Patton or County Survey is confirmed by three competent civil engineesr and land surveyors, and it correctly de-

lineates the location of the lakek Testimony of Merritt S. Cook, Fol. 431-2; testimony of C. E. Bailey, Fol. 498-9 504; testimony of J. D. Lamont, Fol. 522-525.

Defendants' Exhibit 1, introduced in evidence at Fol. 584, represents two systems of survey; that of the black lines locates the lake according to the Patton or County Survey.—Fol. 566-7. Defendants' Exhibit 1 and several of complainants' Exhibits, which were introduced in evidence and admitted to be correct copies of complainants' Exhibits, D., attached to the bill, were not printed in the record either in the Circuit Court, the Court of Appeals or in the record in this court; but the originals were used on the hearing in the Circuit Court and by an order entered by Judge Lochren on the 19th day of December, 1900, based on a stipulation of the respective counsel, complainants, original Exhibit D and Defendants' original Exhibit 1 were ordered transmitted to the clerk of the United States Circuit Court of Appeals, Eighth Circuit, to be used no the hearing of the appeal, and were so transmitted.—Page 346 Printed Record. A like order based on the stipulation of the respective counce1 was made by Judge Walter A. Sanborn, one of the judges of the Court of Appeals of the Eighth Circuit, pursuant to which complainants' said original Exhibit "D" and defendants' said original Exhibit 1 were transmitted to the Clerk of this Court, and are now on file herein.

Rules followed in making the Patton or County Survey.

While there is no dispute as to said Exhibit "D" correctly representing the location of the lake, we would call the Courts' attention to the principles which the Patton or County Survey, upon which this Exhibit is based, was made:

It is conceded that the Section, Quarter and other posts on the exterior boundary of the township, as established by the Howe Survey are clear and distinct and readily found and traced, but the interior lines and posts, except the Northwest corner of Section on 36 cannot be found.

Page 101 Printed Record.

We believe that the authorities cited in Subdivision V of this brief firmly establish the rule that the so-called Howe survey of this township was made and cannot be questioned in this proceeding. This being the rule, the interior lines and corners in this township must be established on the ordinary rules of subdivision for lost corners.

Moreland vs. Page, 2 Clark, Iowa, 452.

Jones vs. Kimble, 19 Wis., 452.

Westphale vs. Schultz, 48 Wis., 75

Pereles vs. Magoon, 78 Wis., 27.

Miller vs. Topeka Land Co., 44 Kan., 354.

Newcomb vs. Lewis, 31 Iowa, 490.

Quinnin vs. Reimers, 46 Mich., 605 & 49 Mich., 449.
O'Brine vs. McGraw, 27 Wis., 446—448.

This was the rule adopted in the Patton survey.—Testimony of C. E. Bailey, fol. 507.

It will be remembered that all of the land in this township had been sold and patented by the Government of the United States, according to the official Government plat, previous to the commencement of this suit.—Fol. 309 Printed Record. That all of the lands in the township had been dispose of prior to March 8, 1887.—Certificate of Register of United States Land Office at Duluth attached to the bill, Fol. 39 of Record.

It will also be remembered that the township over-runs about 90 rods from north to south, Fo. 441 and 486, 487, Printed Record, and that there is a deficiency in the width of the township east and west of about the same number of rods, Fol. 506.

The record also shows that the Government field notes and officiel plat exhibit a township pratically square and sections practically equal, —se plat and field notes of the Howe survey, also testimony of Merritt S. Cook, Fol. 487-488 and 495 of Record,—and they also show no surplus or deficiency.

Under the Patton survey the surplus and deficiency is divided proportionately according to the Howe survey, so that each section is prac-

tically equal.—Page 148, Fol. 441-442; page 163, Fol. 486-487-494 and 496; testimony of C. E. Bailey, Fol. 503-504-507, defendant Cresewell fol. 576 and 577.

The rules followed in making the Patton survey, rest on good reason and authority, and are well stated in the case of Moreland vs. Page, Supra. Commencing at page 148:—

> "here is a large body of land, comprising nearly two ranges of sections, on the north part of the township, on which no subdivisional monuments can be found of this body of land in gross, there is less in quantity than is called for in the original survey. Yet we are, as between the parties here, to regard it as a lost survey, and not as never having been made. It must be restored. But upon what principle the court should determine, that the plaintiff was entitled to carve out of his body of land, made up of numerous subdivisional tracts, the full quantity which his patent called for by actual measurment, and leave others, who had purchased other subdivisional tracts of the same body, under the same conditions with himself, a deficiency, we are at a loss to determine. Had this body of land, on which there are no monuments found, exceeded, instead of falling short of, full measurements according to the original survey, the purchasers of the specific tracts included in this body, would have been sharers of the excess in due proportion, and the plaintiff, with others, to his proportion. On the other hand, he should share the deficiency. But it is said, that fractions in subdividing townships, all fall on the north and west

sides of the townships. That is true in making an entirely new survey; but this survey is not an original one; it does exist, at least on paper. The purchasers have all been made in relation to it. The purchaser of a fractional forty acre tract, located on the north or west side of the township, to the extent of the quantity designated in that fraction on the plat, and by the field notes of the original survey, purchased as definite and determined a quantity of land, having as fixed and determined relations to the whole tract, the survey of which is now lost, as did any one who purchased those sevelar tracts not designated as fractional. The person who might purchase a tract on the north side of the township, designated on the official plot of the original survey as containing thirty-nine acres, had as perfect a vested right to receive thirty-nine full acres, as he who purchased a quarter section in any other part of this body, had to the hundred and sixty acres callled for by his patent. If this is true, it follows that the line established by the court below, is not the true line; for it gives full measure from south to north to the plaintiff, while, by so doing, it leaves to the defendant less length of line from south to north, by two and one-half chains, than he would have had, after sharing his proportion of the general deficiency."

Again, on page 150:—

The field notes and plats officially made, certified and deposited in the proper repository; all necessarily enter into the consideration, in attempting to restore a

lost survey made under them. They together, to speak figuratively, constitute the doomsday book of our western states. The dominion of every land holder has relation to them."

And on page 151:—

"When we take into consideration the fact, that the interior section lines east and wetst, through the township, are not right lines drawn across the whole township, but any given one of these lines, is made up of a series of closing section lines, each to some extent independent of the others. These several section lines may, by a remote possibility, constitute a right line across the township. If practical surveyin g could be made as perfect as theoretical, they might form a straight line, but the difference between theory and practice is such, that the fact is, they seldom if ever do; while on the contrary each line across the township from east to west dividing sections, generally has as many distinct courses as there are sections lying on either side of it. Yet, nevertheless, on the principle of subdividing townships adopted by the Government, any one of these lines east and west through the township, so made up, whether straight or crooked, constitutes, in effect, the base line for the survey of all the land lying north of it in the same township; or, to speak more accurately, each separate south section line, is in fact, the base line for the survey of the section lying north of it. Now, the line on the south side of these two tiers of the section is found. Its section corners are all marked."

(In the case at bar it is the exterior lines of the township which are found and marked, instead of the south side of the two tier of sections as in the Moreland—page case.

Again, at page 152,—

> "The monuments all along this line, and all the other monuments all around this body of land, the subdivisional monuments of which are not found, are as absolute, unimpeachable verities, as the two adopted by the court below, or the six claimed by the defendant. The several tracts of land on the plat, in relation to which the several purchases were made, are each as fixed, and have each as determined relations to each other, and to each of these monuments, as they do to any one of those claimed by the defendants. The unknwon corners must be found by the corroborative testimony of all, with as littel departure as may be, from the system adopted on the original survey, without giving any preponderance to the testimony of any one monument above another. In doing this, courses and distances, which are the elements of superficial measure, must yield to the facts, namely, the established monuments. In other words, to use a homely adage, the several garments must be cut, according to the cloth."

And again, on page 153 and page 154,—

> "The second principle, we understand to be, that all ascertained surrounding monuments shall have their due weight in

determining the locality of the unascertained, under the system by which the survey was originally made. Thirdly, that where on a line of the same survey, between remote corners, the whole length of which line is found to be variant from the length called for in re-establishing lost intermediate monuments, as marking subdivisional tracts, we are not permitted to presume merely, that a variance arose from the defective survey of any part; but we must conclude, in the absence of circumstances showing the contrary, that it arose from the imperfect measurement of the whole line, and distribute such variance between the several subdivisions of such line, in proportion to their respective lengths.

"It has been urged by plaintiff that this is not a lost survey, but that a survey has never been made. To adopt this view, would be to defeat his entire title. His patent has relation to a survey which, if it never existed, leaves him without description in his grant. We cannot conclude that there never has been a survey, though it should have been merely imaginary, so far as the interior lines of these two ranges of sections are concerned. For, although imaginary, it has been platted and numbered, and incorporated into the several grants. The purchasers of all the subdivisions numbered on that plat, have purchased with relation, not only to the monuments, but to the township, range, sections and subdivisions of sections, as shown by the plat. And now, as between these purchasers, it would be an enormity to entirely disregard it."

In the Patton survey it was found by running the interior lines of the township *that there was an excess in the length of the township from north to south of about* 90 *rods and a deficiency in its width from east to west of about the same distance. This excess was divided proportionately throughout the entire township, so that the sections were approximately equal in proportion to the field notes of the Howe survey.* This clearly appears from the evidence in the case, not only in the field notes, but from the testimony of the several engineers, including the defendant Croswell, who have testified as to the plan of the survey, and the survey follows the rule declared in Moreland vs. Page.

All of the cases hereinbefore cited in this subdivision follow that rule; and the only difference between that case and the case at bar is in the length and number of the several lines between established corners on the ground on which no monuments are found. In Moreland vs. Page it was a large part of the northern two tiers of sections of the township in which the original survey had been either defectively or fraudulently made, while in the case at bar it covered nearly all interior lines.

The Patton survey is based not only on the rules declared by the courts which are so clearly exponded in Moreland vs. Page, but in making the survey, *the surveyors have followed the directions of the Commissioner of the General Land Office*, wihch were approved by Secretary Teller on the 13th day of March, 1883, and are to be found in a book entitled "The Public Domain" at pages 669, 672 and 673 of the Government publication made

in 1884, and were in force when the Patton survey was made. We quote the following from this document:

To Restore Lost or Obliterated Corners.

1. To restore corners on base and correction lines.—Run a right line between the nearest existing corners on such line, which corners must, however, be fully identified, and at the point proportionate to the distance given in the field notes of the original survey, establish a new corner. This point should be verified by measurements to the nearest known corners north or south of the base or correction line, or both.

Where several corners are missing between the corners to be connected as directed above, their location will be determined upon the same principles and the same manner, that is to say, the original distance of the entire line between the recognized corners is to the entire distance remeasure between the same corners as the original distance of the first, second, third &c., interval of the original survey is to the new distance to be laid off for the corresponding new interval. After having checked such new location by measurement to the nearest known corners north or south of the line, new corners will be established permanently, and new bearings and measurements taken to prominent objects, which should be of as permanetn character as possible, and the same recorded for future reference.

As has been observed, no existing original corner can be disturbed, and it will be plain that any

excess or deficiency in measurements between existing corners cannot in any degree affect the distances beyond said existing corners, but must be added or subtracted proportionately to or from the intervals embraced between the corners which are still standing.

2. Re-establishment of township corners common to four townships.—Inasmuch as township lines are sometimes run in a direction not true north and south, or east and west, a line should first be run connecting the nearest known corners on the north and south township lines and a temporary corner established at the proportionate distance. This will establish the location of the township corner only so far as its relative position north and south is concerned. The nearest known corners on the east and west township lines will then be connected in the same manner, independent of the temporary corner previously set, and the proportionate point determined in that direction; any difference east or west of the temporary corner which may be developed by the last operation, by intersection with the line previously run north and south, will then be laid off in the direction required from the temporary corner, and a permanent corner established at such point, marked and witnessed as in the foregoing case.

3. Re-establishment of interior section corners.—This class of corners should be re-established in the same manner as corners common to four townships. In such cases, when a number of corners are missing on all sides of the one sought to be

re-established, the entire distance must, of course, be re-measured between the nearest existing recognized corners both north and south and east and west, in accordance with the rules laid down, and the new corner re-established by proportionate measurement in any one of the required directions will not suffice, since the direction of the several section lines running northward through a township or running east and west, are only in the most exceptional cases true prolongations of the alignment of the section lines initiated on the south boundary of the township; while the east and west lines running through the township, and theoretically supposed to be at right angles with the former, are seldom in that condition, and the alignment of the closing lines on the east and west boundaries of the township, in connection with the interior section lines are even less seldom in accord. Moreover, the alignment of the section line itself from corner to corner, in point of fact, also very frequently diverges from a right line although presumed to be so from the record contained in the field notes and so designated on the plats, and become either a broken or a curved line.

7. Re-establishment of quarter section corners on section lines closing upon the north and west township boundaries.—This class of corners must be re-established according to the original measurement at forty chains from the last interior section corner. If the measurements do not agree with the original survey, the excess or deficiency must be divided proportionately between the two distances, as expressed in the field notes of original

survey. The section corner started from and the corner closed upon should be connected by a right line, unless the retracement should develop the fact that the section line is either a broken or curved line, as is sometimes the case.

8. Re-establishment of interior quarter section corners.—In som eof the older surveys these corners are placed at variable distances, in which case the field notes of the original survey must be consulted, and the quarter section corner re-established at proportionate distances between the corresponding section corners, in accordance therewith. The latter surveys being more uniform and in stricter accordance with law, the missing quarter section corners must be re-established equidistant between the section corners marking the line according to the field notes of the original survey. There marks made under section 5, in relation to section lines, apply with full force here also."

Great pains have been taken by the complainants in this suit to ascertain the true location of the lake, and its relation to the several Government lots in question, and to lay before the court all the evidence attainable which would accomplish that result. The court has before it—First, the original Government plat and the field notes of the Howe survey upon which it is based. Second, the field notes and calculations of the Patton survey, so-called. Third, the testimony of three expert civil engineers and land surveyors, who not only checked the Patton survey with the aid of the field notes and calculations of that survey, but also the field notes of the original Howe survey, by running the lines

on the ground, and have found the Patton survey to be correct, and witnesses Cook and Bailey each have prepared plats showing the location of the location of the lake and the several fractional lots in question, based on the Patton survey; each of which correspond to and are copies of complainants' Ex "D" attached to the bill. And one of the defendants, Croswell himself a civil engineer and land surveyor, who with this evidence before him, and under consideration for several weeks, has not attempted to dispute its accuracy, and the accuracy of the Patton survey, and complainants' Ex. "D" based thereon is not questioned in this case either in the pleadings or in the proof.

We have deemed it important to call the Court's attention to the exact and correct location of the lake as established b ythe evidence, because of the persistent attempt on the part of the defendants on previous arguments of this case to assume quite a different location; that is, the location as delineated on defendants' Ex. "B" attached to the answer.

X.

Security, Land & Exploration Co. vs. Burnes.

In this connection we would call the Court's attention to the case of Security Land & Exploration Co. vs. Burnes, decided by the Supreme Court of Minnesota in July last and reported in Vol. 91 N. W. Repp. pp. 304. This case relates to portions

of lots 3, 5, 6, and 7 of Section 4, same township. In that case the location of Cedar Island Lake was by stipulation of the parties admitted to be correctly delineated on Exhibit "B" attached to the stipulation of facts. Fol. 39 paper book of that case. It was further stipulated that said Ex. "B" represents the lake as it actually exists and did exist in 1876 when the field notes of the Howe survey were made and filed. Fol. 26 paper book of that case.

By comparing the plat, "Exhibit B" attached to the findings in the Security Land & Exploration case, with defendants' "Exhibit B," attached to the answer, in the case at bar (pp. 73 of record) it will be seen that they are copies one of the other. That the location of the lake and the fractional lots surrounding it are the same.

While a comparison of the plats, defendants' Ex. "B" and complainants' Ex. "D," in the case at bar demonstrates the error of the former, and while no witness who has been sworn or examined in this case has claimed that said Ex. "B" correctly locates the lake, yet we beg leave to briefly call the Court's attention to portions of the record in this case which demonstrates its fault, because of the controlling influence which Exhibit "B" exercised in the decision of the Security Land & Exploration Co. vs. Burnes.

The witnesses Cook and Bailey each when questioned on the subject, swore that said Ex. "B" is imaginary, without any regard to the actual location of the lake. Fol. 438 record, Fol. 507 record.

Defendant Croswell in his testimony, in explaining the theory on which the red line system of

surveys was made, as delineated on defendants' original Exhibit "I," says that all of the excess and shortage was thrown into the north and west tier of sections but not in the north and west tier of forties. Fol. 577 record. He stated further, that the south red line on said Ex. "I" is practically parallel to the south boundary of the township and four miles distant therefrom, with the exception of the west side where it is not parallel. Fol. 567 record. In other words, it appears from his testimony that the two northern tiers of sections in this township, as delineated on the red line system of original Ex. "I," were drafted without reference to the rihgts of the property owners in the four tiers of sections lying south. That no interior lines and corners could be found within this township, except a corner post set at the northwest corner of section 36 and a quarter post in the western line of said section 36. Yet, notwithstanding the fact of the large excess in the length of the township north and south and a shortage in the distance east and west across the township, all of the excess and shortage existing in this township was distributed in the north and west tiers of sections.

Under this system of survey, it is obvious that the lake, as delineated, would lie too far north and too far east, as sworn to by several civil engineers who have been examined in this case on the part of the complainants. And by a comparison of defendants' Ex. "B" and the red line system of survey of their original Ex. "I," it is evident that on both of these plats if the side lines of lat 3 of Section 4 were extended south indefinitely, they would not reach the lake.

It was because of this fact that the Supreme Court of Minnesota held that the case of the Security Land & Exploration Co. vs. Burnes was governed by the authority of French-Glenn Live Stock Co. vs. Springer, decided at the last term of this court.

We have attached to page 97 of this brief plat "3," which delineates Ely or Cedar Island Lake and the subdivisions of the land as located by the Patton survey and as presented by complainants' Exhibit "D," attached to the bill. On this plat "3," however, as in defendants' Exhibit "B," no lines appear between the meander line and the actual waters of the lake, as the field notes of th original Government survey and the Government plat represented it as water. This plat is attached for the purpose of comparison with defendants' Exhibit "B" attached to page 73 of the record.

XI.

On the undisputed facts in the case at bar the decree of the lower courts should be sustained on the authority of French-Glenn Live Stock Company vs. Springer.

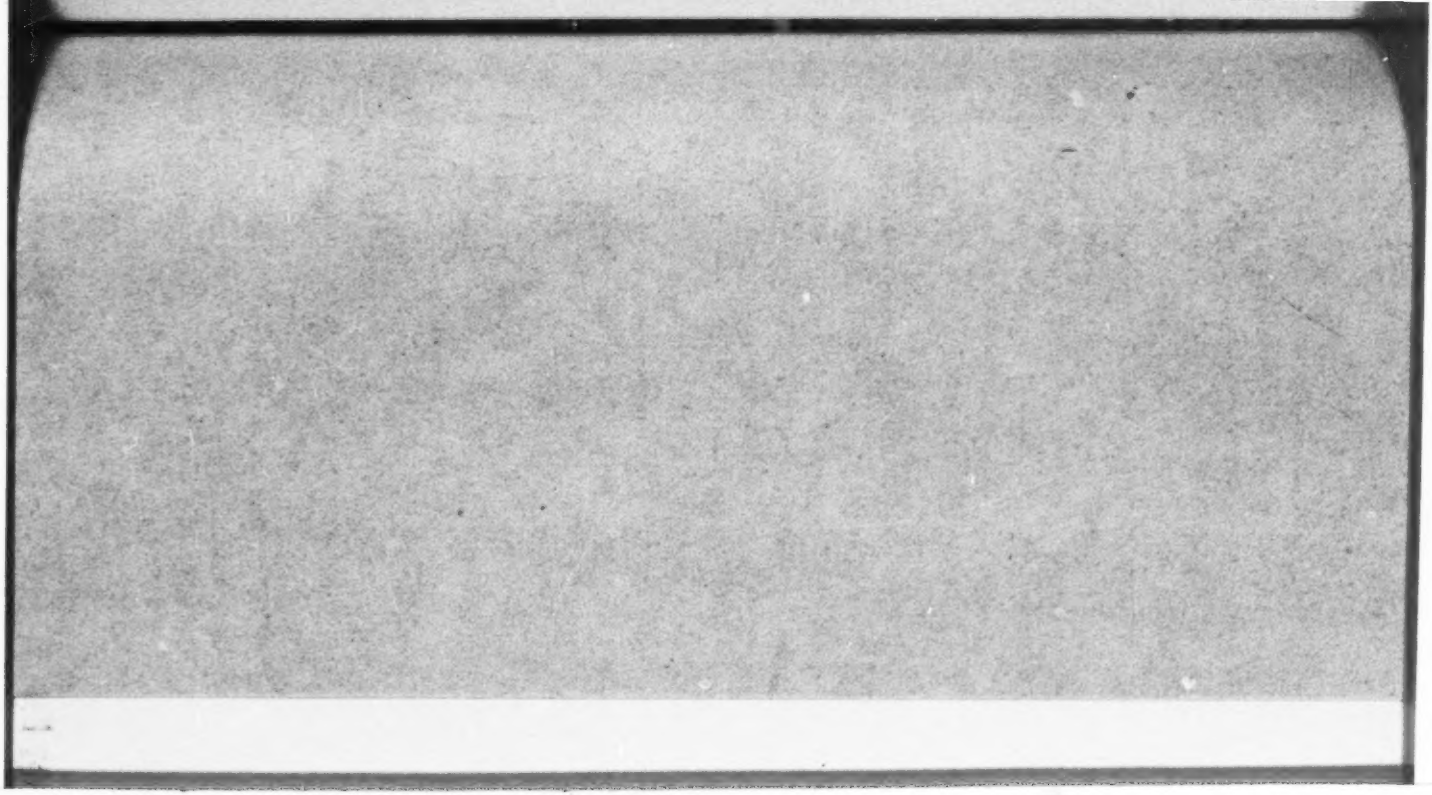
In the French-Glenn Live Ctock Co. case, it was found as a fact that no lake existed to the north of the lot in question at the time of the survey or at any time since. In that case this court held at page 566 Vol. 22, Supreme Court Reporter,—"For

the reasons already given, we think that while the plats are conclusive as to the meander line, and while, if there was a lake abutting on or to the north of the lots, the plaintiff in error should take all the land between the meander line and the water, and all accreations, it was competent for the defendant to show that there was not, at the time of the survey nor since, any such lake, and to contend that in such a state of facts, there should be no intervening land and no accreation by relic-tion."

We have, therefore, in the case at bar a state of facts undisputed, which brings us directly within the rule recognized and declared by the recent decisions of this court, and which is based on an uninterrupted line of decisions by this court, from Chief Justice Marshall to the present time.

The undisputed facts in this case are, that every lot about the lake will reach the lake and abut thereon if the lot lines are extended. See Plat "1" attached to 99 page of this brief, showing the lot line of the several lots about the lake extended from the meander line to the lake. This plat, it will be observed at a glance, is drafted on the principle governing the Patton survey and shows the location of the lake in relation to the several lots as delineated on complainants' Exhibit "D", attached to the bill, on a reduced scale.

If, therefore, the decision of the Supreme Court of the State of Minnesota in the Security Land & Exploration Co. case should receive the sanction of this court, it would not, in our judgment, constitute a precedent for the case at bar. We do not,



however, for a moment entertain the belief that this court will sustain the Supreme Court of Minneapolis in the last mentioned case on the facts presented in that record.

On the record in the Security Land & Exploration Co. case the plat shows and names the lake. The plat was made, based on the fact that the lake existed—that it was intended to be made a boundary. The intention to convey the lots covered by the patents to the lake was clearly expressed in the patents of the several fractional lots. T' s intention would not have been more clearly expressed had the patents to the respective lots named the lake as a boundary, instead of conveiying the lots according to the plat.

Referring to the French-Glenn Live Stock Co. case, upon which the defendants place such strong reliance: In that case the plaintiff did not claim that the land in dispute was included within the description of the patent, but did claim that by reason of the recission of the water, the land formed by the recission became the pltaintiff's as a reliction. The jury found that there had been no such lake, and therefore, there had been no reliction. It was not claimed that the meander line as located by the field notes differed from the actual shore line of the lake at the time of the survey. In this case there was no lake boundary at all to the north of the land in question. It was claimed by the plaintiff in this case, and this fact was submitted to the jury, that in 1877 Malheur Lake was a continuous body of water up to the meander line of that year; there was a narrow ledge or reef across the end of

the lake about 1 2or 15 miles west of the land in dispute which separated its waters from those of Harney lake; that its waters were from 8 to 12 feet higher than those of Harney lake; that in 1881 the water overflowed the ledge cutting a hole through, and as a result, the surface of Malheur Lake was lowered leaving the disputed land bare. The Jury found against the plaintiff' claim. Found that this lake whish it was claimed extended across the front of this land and to a point some twelve or fifteen miles west of the lake in dispute, never existed to the north of the land.

Reading the decision in the French-Glenn Live Stock Co. case in the light of a long and uninterrupted line of decisions by this court, we see no ground upon which Supreme Court of the State of Minnesota can be upheld.

The controversy in the case at bar is such that it presents the question nakedly, whether the United States by its patents conveyed the land which is in dispute. No question arises as to the rights of the different grantees from the United States under the patents which may conflict.

Location of the Lake by either method.—Defendants' Ex. "B.", or as it is correctly located as an undisputed fact in the case at bar, under either there can be no mistake as to the intention of the Government in granting the lands with the lake as a boundary.

In *Beaty vs. Robinson*, 130 *Ind.* 589 (30 *N. E. Rep.* 706) it was held expressly that *where there is a variance between the plat and the field notes, the plat must control, since the plat represents the lines*

fixed by the surveyor general, and the lands are sold by the plat. This is the adoption of the law as declared by this court in the large number of cases cited on 15 & 16 pages of this brief.

We will suppose, if the court please, that the record in the case at bar presented the fact of the Government conveying in one body and by one patent all of sections 2, 3, 4, 9, 10 and 11, according to the Government plat, Ex. "A" attached to the bill of complaint. In such case, would there be any doubt that the Government intended to convey and did convey all of the lots about the lake with the lake as a boundary? As a matter of fact, with the exception of lot 1, Section 11 and Lots 4, 5 and 6, Section 2, the case at bar and that of the Security Land & Exploration Co. vs. Burnes and Wickey, now pending in this court, does involve the title of all of the lands which are by said Government plat shown to be bounded by the lake, and they have agreed upon and settled the boundary as between themselves.

In the case at bar there is no question presented between the different grantees under the several Government patents or the boundaries of the several lots, and between the several owners.

Judge Lochren and the Court of Appeals of the 8th Circuit, in confirming his opinion, did not deem it necessary to decide the question of the boundary of the several lots as between the various purchasers who claimed title through the several patents from the Government.

Quoting from Judge Lochren's opinion in this case, 103 Fed. Rep., pp. 108:

"It is admitted that all the land in said township has been sold according to said plat and conveyed to the purchasers by patents referring to said plat. According to the said patents, and said plat to which they all refer, the Government has conveyed away the title to every acre of land in respect to which the land department has assumed to order this survey; the effect of which will be to disturb and cast a cloud upon the titles of the purchasers under these patents. It is admitted that as much in area in deep lakes in said town has, in accordance with said plat, been so sold and patented as land, as there is of dry land represented. this deep lake area was purchased as land by complainants.

"The Government as against purchasers, in good faith like the complainants is bound by its own plat, in accordance with which it has sold and conveyed all the land in that township. The purchasers must settle their titles and boundaries between themselves; and the land department has no longer the right to meddle with the land, or cast doubt upon the titles so conveyed.—pp. 335, Printed Record.

XI.

The fact that in order to give to each lot which by the Government plat is shown to abut on the lake, a lake frontage, it is necessary to deflect the side lines of the several lots, and, if not so deflected, the side lines will overlap each other, is immaterial.

The remarks of Justice Start in speaking for the Supreme Court for the State of Minnesota, in

opinion filed in the Security Land & Exploration Co. case in July last, that if the side lines were extended they would overlap each other in inextricable confusion is the adoption of a point in the argument of defendants' council on previous hearings o fthis case. If this objection to the plaintiffs' title to the land in controversy was held material, then the decisions of this court from its earliest history would have to be reversed.

Said Chief Justice Marshall in *McIver's Lessees vs. Walker*, 9 *Cranch* 178:

> "If water courses or other natural objects are called for in the patents, distances must be lengthened or shortened and courses varied so as to conform to those objects."

This was affirmed in Newson vs. Pryor's Lessees, 7 Wheat., 7:

Higura vs. U. S. 5 Wall, 827.

Brown vs. Huget, 21 How., 62 305.

Morrow vs. Whitney, 95 U. S., 551.

Bartlet Land & Lumber Co. vs. Saunders, 103 U. S., 316.

Ayers vs. Watson, 113 U. S., 594.

St. Clair Co. vs. Livingston, 23 Wall., 46.

Cragin vs. Powell, 128 U. S., 691.

Yarnish vs. Tarbox 49 Minn., 286.

In fact whenever this question has come before this court, the opinion of Chief Justice Marshall in McIver's Lessees has been affirmed and recognized as elementary law.

In the language of Justice Clifford in the Higura case:

> "Early surveys are loosely made and are liable to be inaccurate, especially when made in rough or uneven lands or forests; that the courses and distances given in instruments or records are more or less uncertain, and always give way in question of doubt or discrepency to known monuments and boundaries referred to as identifying the land."

In the cases cited, this court has often in plain language recognized the fact that public surveys by the government, especially in a rough or uneven country or of lands covered with forests are notoriously incorrect; and have always held in case of discrepancy or doubt that courses and distances given in instruments are more or less uncertain, and must always give way in question of doubt or discrepency to known monuments and boundaries referred to as identifying the land.

The Secretary of the Interior, as head of the Land Department of the United States, in a circular letter of instruction referred to on page 90 of our brief, in subdivision of 6 of the circular under the head "To Restore Lost or Obliterated Corners" calls particular attention to this fact and uses the following language:

> "The mere measurement in any one of the required directions will not suffice since the direction of the several section lines running northward through a township or running east and west are only in the most ex-

ceptional cases true prolongations of the alignment of the section lines initiated on the south boundary of the township; while the east and west lines running through the township and theoretically supposed to be at right angles to the former are seldom in that direction, and the alignment of the closing lines on the east and west boundaries of the township, in connection with the interior section lines even less seldom in accord. Moreover the alignment of the section line itself from corner to corner in point of fact also very frequently diverges from a right line, although presumed to be so from the record contianed in the field notes and so designated on the plats, and become either a broken or a curved line."

These instructions were sent out by the Secretary of the Interior in 1883 for the avowed purpose of replying to the numerous inquiries from county and local surveyors as to the proper method of restoring to their original position lost or obliterated corners marking the survey of the public lands of the United States. And this letter, to which reference has been heretofore made, commences on page 669 of th book issued b ythe Government entitled "The Public Domain" and published in 1884. The portion to which reference is here particularly called is found on page 92 and also on page 93 of this brief.

In the case at bar the rules invoked by the complainants for a division of the surplus land about the lake have been recognized by this court from its earliest history; and a surveyor keeping in mind that in questions of doubt or disprecency courses

and distances must give way to known monuments, in making his survey under the rules recognized by this court and the instructions of the Interior Department referred to, has only to divide the land in such manner between the proprietors of the various lots, so that each shall have his proportionate share of the surplus land and an equitable share of the water front.

In the case at bar, the meander line as shown by the Government plat is available for this purpose and this purpose only.

In making the division of the land in question no features are presented which do not frequently arise in determining division lines between separate holdings of land bordering on the great lakes and bays and the interior lakes and streams of the country. The same question is presented in determining division lines between separate holdings in shallow waters or navigable bays of other public waters where the shore is curved or irregular. In all such cases the shallow water bordering on the curved or irregular bank becomes available as land on the establishment of the dock line, and on filling in the shallow water to such dock line or any other means by which addition is made to the several parcels bordering on the water. Neither does it differ from the conditions which frequently arises in the division of land formed by accretion or reliction. In any case where surplus land is to be divided, while different rules have been adopted by different courts, yet the courts have all recognized the fact that the surplus land should be so divided as to give to each proprietor access to the water, and an

Plot 2 attached to page to 106 of this brief represents this several fractional lots with side lines deflected from the meander line as shown on the government plot to the shore of the lake so as to give to each lot its equitable share of lake frontage and of the excess land.

equitable share of the water front, and to accomplish it the side lines of lots in most cases must be deflected. The court's attention is called to the following cases in which these questions have been presented and disposd of on this principle, and they constituting but a small portion of the adjudged cases on this question:

Batchelder vs. Kemolein, 51 N. H. 496.

Kerr vs. Schneider, 114 Ill., 313-316.

Blodgett & Davis Lumber Co. vs. Peters, 49 N. W. Rep. (Wis.) 917.

Jones vs. Johnson, 18 How. 150, (15 L. 320-324).

St. Clair vs. Livingston, 90 U. S., (23 Wall) 44.

Soulet vs. Sheperd, 4 Wall., 502.

New Orleans vs. U. S., 10 Peters, 662.

Moreland vs. Page, 1 Clarke (Iowa), 139-153.

Schools vs. Risley, 10 Wall., 177 (19 L. 856.)

Johnson vs. Jones, 1 Black, 209 (17 L. 117.)

Jones vs. Soulard, 24 How., 8(16 L. 604.)

The Patton survey, by which the location of the interior corners and lines of the two northern tiers of sections was made also rests on the authority of the foregoing cases in giving each lot owner his proportionate share of lake frontage and by following its method every other interior corner, and the

boundary of every subdivision in the township can be readily ascertained and determined by any competent land surveyor.

In the Patton survey the official plat of the township is regarded as an entirety. Under it all of the purchases of land in the township are regarded as having been made in relation to the Government plat; and each land owner is given his share of any excess and bears his proportion of any deficiency and following the same equitable principals those who have purchased land represented on the plat as bordering on the waters of Ely Lake are given their proportionate share of frontage on the lake; and every purchaser of land in any other part of the township is bound to regard their right to the lake frontage, as they and all others are bound to regard the rights of every other property holder in the township as represented on such plat.

No injustice arises, or can arise, in a subdivision of the township on the principles adopted in the Patton survey. It regards the rights of every land owner therein; it regards the rights of the Government of the United States, which has sold and conveyed all of the land in this township according to the plat. As to the settlers about this lake whether they are in fact, themselves, the party in interest in the claim they make to homestead rights, or as it may be properly assumed, by the abundant means which has been at their disposal to maintain the litigation over this title, which has now been pending in the departments and in the courts for a term of years, that they are but the figure heads of capitalists; they represent the truth of the re-

mark of Justice Bradley in Mitchell vs. Smale, Supra., in speaikng of the hardships, and one not to be endured, for the government officers to make new surveys and grants of the beds of such lakes, and selling and granting the lands bordering thereon, or represented so to be:

> "It is nothing more nor less than taking Plenty of speculators will always be found as such property increases in value, to enter often the most valuable, part of his grant. from the first grantee a most valuable, and in and deprive the property owner of its enjoyment."

And also the Late Justice Mitchell of the Supreme Court of Minnesota in Lamprey vs. State, 52 Minn. 197, referring to the rule which the appellants contend for in this case:

> "If the rule contended for by the appellants is to prevail, it would simply open the door for prowling speculators to step in and acquire title from the state to any reliction produced in the course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to the waters."

That Judge Lochren so regarded the position of the settlers in this case is evident from his adoption of the language of Judge Mitchell in the case last aobve cited, in deciding the case at bar when before him.—pp. 336 Printed Record.

This view has been repeatedly expressed in the

opinions of this court. Justice Lamar in the case of *Cragin vs. Powell*, 128 *U. S.*, 691, which is on all fours with the case at bar, referring to the purchaser under the re-survey, remarked as follows:

> When he purchased this land from Wolfe, he knew that the tract to which he was laying claim had been possessed and cultivated by the appellant for a long period of years, an advantage thus obtained a court of equity will not readily enforce."

As was said in *Taylor vs. Brown*, 9 *U. S.*, 5 *Cranch* 234 (3 L. 88):

> "The term of the subsequent location proved that the locater considered himself as comprehending Taylor's previous entry in his location. He either did not mean to acquire the land under Taylor's entry, or he is to be considered as a man watching for the accidental mistake of others and preparing to take advantage of them. What is gained at law by a person of this description equity will not take from him, but it does not follow that equity will aid his views."

The opinion expressed by Chief Justice Marshall in this last case, quoted by Justice Lamar, has, so far as we have been able to ascertain, been followed by this court on every occasion when a similar state of facts has been before it.

This case of Taylor vs. Brown was a bill in equity by the complainant. The land warrant under which the defendant claimed called for 2,000 acres of vacant land. The warrant was the basis of

the defendant's claim of title. Within the lines of the survey made under this warrant, and which survey called for 2,000 acres, there was in fact something over 3,080 acres, an excess of more than one-half. It was the title to this excess which was the subject of the controversy and the court held the whole 3,080, included in the survey, passed by the grant.

We rave referred to the light in which persons claiming title to land under similar state of facts to that of the settlers about Ely Lake have been regarded from the earliest history of this country by this court, because these settlers are the only persons who would, or can, be affected by the shape or quantity of the land included within the boundary lines of the fractional lots. So far as the lines between different holdings under Government patents are concerned, as to the most of the lots in question, these lines have already been agreed upon and settled between the parties themslves. While we believe that there can be no question as to the rights of every owner of land about Ely Lake, who derived his title through patent, and in which patent his land was described as according to the survey and plat of the township, to have his proportionate share of the lake frontage and a like proportionate share of the surplus land, yet, if this were not the established rule, *there would be no difficulty in settling the boundaries of the several fractional lots about the lake, under the rule of priority of grant.* Winano & St. Peter R. R. Co. 45 113 U. S. 618, 629; Barney Hooten vs Comerford. 152 Mass., 591. It will be noted by referring to the

copies of the several patents to the several fractional lots about the lake that they were issued on the following dates:

Lot 1, Section 3; Lot 8, Section 4; Lot 4, Section 9; February 20, 1882.—pp. 527 Record. Lot 2. Section 3; Lot 1, Section 4, sade date.—pp. 262 of Record. Lots 1 and 2, Section 10, March 3, 1883.—pp. 264-265 of Record. Lots No. 1, 2 and 3, Section 2, January, 30, 1884.—pp. 287-283 of Record. Lots 5, 6 and 7, Section 4, October 3, 1888.—pp. 296 of Record. Lot 3, Section 4, October 3, 1888.—pp. 298 of Record. From plat 1 attached to page— of this brief, it will be noted that if the side lines of the several lots are extended to the actual waters of Cedar Island Lake, that lots 1 and 2 of Section 3 and lots 1 and 8 of Section 4, will, by reason of priority in grant, extend to and border on the lake; while lots 3, 5, 6 and 7 of Section 4 and lot 1 of Section 9 will extend beyond the meander line only to the westerly line of said Lot 8. As to Lot 2, 3 and 4 of Section 9 there would be no conflict, and they would extend to the actual waters of the lake. As to Lots 1 and 2 of Section 10, they would extend to the actual waters of the lake; Lot 3 of the same section being of a later grant, but not conflicting, would extend from its northern boundary on the meander line to the lake. As to Lots 4, Section 10 and 3 Section 11, there would be no conflict; neither would there be with Lots 1, 2 and 3 of Section 2. As we have before stated, there is no doubt as to the correctness of the rule by which each lot owner is entitled to his proportionate share of the

lake frontage, yet without the existence of this equitable and just rule there would be no difficulty in establishing the boundary of the lots giving to each lot holder all of the land between the extended lines of his lot, providing there was no other prior claim.

OVERLAPPING LINES.

It is evident that one of the reasons stated in the opinion of the Supreme Court of Minnesota, in the Security Land & Exploration case, why the meander line should be accepted as a boundary line instead of the water boundary, as shown on the plat, "of the side lines of the several lots were extended they would overlap each other in inextricable confusion," finds no support in the decisions of this court. The numerous cases cited in this brief where the meander line and the body which it purports to meander have not been co-incident, have presented irregularities in lot lines different among themselves in almost every individual case. But this court has not, to my knowledge, in any case held that the shape of the lots or variation in the courses of the lot lines from that expressed in the patent, was a reason why the clear intention expressed in the instrument, to give to the respective lot owners a frontage on the water to which the patent referred, should be ignored.

If the complainants had a right to rely on the Government plat as indicating the boundary of their several lots, they and every other land owner

in the township had the right to rely upon this plat at a whole; and on no other principal can the title to any part of the land in this township be sustained. It will be remembered, that the same want of corners and lines exist in the remaining portion of the township as in the two northern tiers of sections covered by the order of survey. And this objection as to the overlapping of lot lines we believe is fully covered by the cases cited on page —— of this brief; and the principle of which are fully discussed in Moreland vs. Page.

XII.

Defendants' erroneous assumption that the meander line is the boundary.

The contention of the defendants in this case has been to the effect that the Government was not bound by its patent; that the respective patents of the fractional lots should not have effect according to their terms, or in any case convey the land to the boundary designated in the patent, because there may have been errors or fraud in the Government survey, made years before the patents were issued, and because of the excess of land btween the meandr line and the waters of Cedar Island Lake. In order to support this contention, they assume as the basis of their argument—first, that the meander line, from the fact that it is conceded that there is no evidence on the ground that it was ever run, must be taken as the line of boundary, and that such

meander line cannot be disputed. We would note here, that it is a well known fact that the meander line is seldom or never run on the ground in Government surveys. Second, because of the excess of land between the meander line and the actual waters of the lake. They assume this position against an uninterrupted line of decisions of this court, which has always held whenever the question has come before it, so far is we have been able to ascertain, that a meander line is never a boundary line when the body meandered is plain and open to be seen. Every case cited in subdivision II of this brief sustains our position, that a meander line was never intended for a boundary, but for an entirely different purpose.

As to the right of defendants to question this survey and to eliminate the waters of the lake as a boundary line from the patents under which complainants derived title, this branch of the case is fully covered by subdivision IV of this brief.

XIII.

Gross excess of land between the meander line and Cedar Island Lake.

It has been the contention of the defendants that the theory deducible from the decisions of this court on this question is, that where there was gross excess of land between the meander line and the body of water meandered, that this is an evidence of

a mistake in the survey; and in such cases the meander line, and not the body meandered, is the boundary.

The Supreme Court of Minnesota in the Security Land and Exploration Company case, quoting from Olson vs. Thorndike, 76 Minn. 399, and referring to that case, says:

> "There may be cases in which the error in the Government survey is so gross, that the purchase of the fractional, or supposed fractional, subdivision of Government land will not take to the shore of the stream or lake although the plat of the subdivision calls for such shore as one of the boundaries."

We have no doubt but that cases may exist in which the error in the Government survey is so gross that the purchasers of the fractional subdivisions of Government land will not take to the shore of the stream designated on the plat. Such a case did exist in French-Glenn Live Stock Company vs. Springer, where there was no lake bordering on the land in question, or to the north of it, which the exterior lines of the lots in question, if indefinitely extended, would reach. We submit, however, and have already discussed this question fully, that such a state of facts is not presented by the case at bar. We would in this connection call the court's attention to the gross acreage as shown by the Government plat of the fractional lots bordering on Ely Lake, and the excess of land lying between the meander line and the lake. This excess is admitted

to be about 900 acres.—See Fol. 302-303 of Record.

> "Cedar Island Lake is a navigable, deep and permanent body of water, fed principally by springs, having an area of about 900 acres instead of 1800 acres as described in the field notes of Howe and shown upon the Government plat."

Taking the acreage as shown on the Government plat of the fractional lots about the lake, we find it to be as follows:

In Section 3,	Lot 1	25.40 acres
	Lot 2	49.38 acres
In Section 4,	Lot 1	56. acres
	Lot 8	27. acres
	Lot 3	50.87 acres
	Lot 5	34.75 acres
	Lot 6	30.50 acres
	Lot 7	25.25 acres
In Section 9	Lot 1	32.90 acres
	Lot 2	25.75 acres
	Lot 3	46. acres
	Lot 4	43.45 acres
In Section 10,	Lot 2	25.50 acres
	Lot 3	39.95 acres
	Lot 4	31.31 acres
In Section 11,	Lot 3	28 acres
	Lot 2	58.80 acres
	Lot 1	39 acres
In Section 2,	Lot 4	57.75 acres
	Lot 5	28.25 acres

Lot 6 .....13.25 acres
Lot 1 .....24.30 acres
Lot 2 .....10.25 acres
Lot 3 .....16.30 acres
Making a total of .....859.81 acres

It will thus be seen that the excess land is but a trifle more in acreage than the gross amount of land in the fractional lots as shown by the Government plat abutting on the lake, which excess is to be divided proportionately among such several fractional lots. The defendants in previous arguments of this case have attempted to show a large excess. In doing so, they have gone outside of the record in the case 900 acres of excess is all that can be claimed to exist within this disputed territory. An examination of the cases decided by this court is abundant proof that such an excess has never been regarded as so gross that the purchaser of the fractional, or supposed fractional, subdivisions of Government land will not take to the shore of the stream, where the plat of the subdivision calls for such shore as one of the boundaries.

In the case of *White vs. Burnley*, 20 *How.* 235, the quantity of land that the lines of survey included was equal to two leagues, whereas only one league was called for in the grant; and the reason the surveyor gives in his certificate of survey for the excess is, that he included in the survey a bay of the ocean, which was not subject to grant, a quantity equal to a league. This statement was proved to be untrue, almost entirely. The grant contained two

leagues and more of fast land; and for this reason it was insisted at the trial that it was fraudulent and void. This is on all fours with the case at bar. The survey represented that more than one-half of the land was included in the ocean.

Newson vs. Pryor's Lessee, 7 *Wheat.*, 7 (5 L. 382), was a case, as stated by Judge Marshall in his opinion, "it is apparent that a survey was not made in fact, but that after making a beginning corner, the surveyor made out and returned a plat which he supposed would comprehend the land intended to be acquired. The call for the second line of the survey was to run south 894 polls to a stake crossing the river. This distance would not reach the river and must be continued to 1222 polls." The court here, notwithstanding the gross excess of the distance, disregarded the distance call and extended the line to the monument called for in the grant.

In *Mitchell vs. Smale* the tract patented contained, according to the field notes and Government plat, 4.53 acres. This did not include a tongue of dry land beyond the meander line, as shown by the notes and official plat, which contained 25 acres. The court held that the whole 29.53 passed by the patent.

In *Harden vs. Jordan* the same body of water and a portion of the same meander line was involved.

Cragin vs. Powell, 128 *U. S.* 691 (32 *L.* 566.) This was a case in equity which involved a water

boundary, and there was an excess over the acreage named in the grant, consisting of a strip of land one-half mile wide extending the whole length of the township.

In the Minnesota cases, *Erkins vs. Nicolin*, 39 *Minn.*, 462, the plat designated the lot as only 80 feetin width which as a matter of fact was 110 feet in width.

In *Nicolin vs. Schniderhem*, 37 *Minn.*, 63, the plat gave the lots as 33 and 35 feet in width respectively, as a matter of fact the legnth of the lots was 59¼ and 51½ feet respectively.

In *Lampry vs State*, 52 *Minn.*, 192, the greater part of a lake which had dried up was divided up among the riparian lot owners.

In *Ericson vs. Wasecа*, 44 *Minn.*, 248, about one-half of one lot was beyond the meander line.

In *Schlosser vs. Crookshank and Caldwell vs. Jackson and McNary vs. Jackson*, 96 *Iowa*, 414; 65 (N. W.) 344.

In the Schlosser case there was more land outside the meander line than within as shown by the plat. In each of the cases the excess was large.

It is evident on the authority of the foregoing cases, that the quantity of land lying between the meander line and the actual waters of the lake afford no reason why the well settled rule relating to the construction of deeds and patents should be disregarded in this case, or take this case out of the general rule which gives supremacy to natural mon-

uments over courses and distances. The case of Newsom vs. Pryor's Lessee decided by Judge Marshall in 1822, and which has never been overruled is peculiarly applicable to the case at bar. It appears from the testimony, taking it as a whole, that this township in 1876, when the Government survey was made was a wilderness difficult of access and heavily timbered.

Quoting from Newsom vs. Prior's Lessee:

> "In consequence of returning plats where no actual survey had been made, and where the country had been very imperfectly explored, the description contained in the patent often varies materially from the actual appearance of the land intended to be acquired; natural objects are called for in places where they are not to be found; and the same objects are found where the surveyor did not suppose them to be. In a country of a tolerably regular surface, no considerable inconvenience will result from this circumstance. The course and distance of the patent will satisfy the person claiming under it, and seldom interfere with the rights of ithers. That in a country where we find considerable water-courses and mountains there must be more difficulty. The surveyor calls for some known object, but totally miscalculates its courses, distances or both from some given point which he has made the beginning of his survey; and there is a variance in the different calls of his survey, and of the patent founded on it. As in this case, the second line is to run south 894 poles, to a stake, crossing the river. This distance will not reach the river; and must be continued 1,222 poles to cross the river. The distance must be disregarded and this line be extended as to

cross the river, or the distance must control the call for crossing the river. These difficulties have occurred frequently, and must be expected to occur frequently where grants are made without an actual survey. Some general rule of construction must be adopted; and the rule must be observed or the conflicting claims of individuals must remain forever uncertain.

"The courts of Tennessee and all other courts by whom causes of this description have been decided, have adopted the same principle and have adhered to it. It is, that the most material and most certain calls shall control those which are less material and less certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance. These decisions are founded on two considerations. Generally speaking, it is the particular intention of the purchaser to acquire the land lying on the stream called for, as being more valuable than other land; and in every case where a natural object is mentioned it designates the land surveyed had there been an actual survey, much more certainly than course and distance can designate it. In this case, for example, the surveyor says that he has run south 894 poles, to a stake crossing the river. Now, it is much more probable that he should err in the distance, than in the fact of crossing the river. The conclusion, therefore, had an actual survey been made, would be, that the line did cross the river.

"The general effect of this principle undoubtedly is, that the purchaser acquires more land than is expressed in his grant, and more than he has paid for. Where this has been thought an object worthy of legislative attention, provision has been made for it. Courts cannot now shake a principle so

long settled, and so generally acknowledged."

It will be observed that Chief Justice Marshall decided this case on the ground that it was much more probable that the surveyor should err in the distance, than in the fact of crossing the river notwithstanding, the error in the distance to the natural monument resulted in adding to the grant a tract of land containing something like 1700 acres.

The *Higuras vs. U. S.*, 5 *Wall.*, 825 *at* 827 (18 *L.* 471). This was a case in which there was error, not only in the distance, but also in the courses most of which were erroneous. Chief Justice Clifford, however, who spoke, for the court, declared in favor of the natural monument, holding that courses and distances given in the instrument were more or less uncertain, and must always give place in questions of doubt or discrepancy to known monuments and boundaries referred to as identifying the land.

The fundamental rule which this court has always regarded, that boundaries fixed by natural monuments shall prevail over courses and distances and statements of quantity, will not be departed from in this case, where the excess of land is much less than that in many of the cases which we have cited, and particularly, where the complainants in this case purchased the land in question relying on the Government plat, the particular consideration which induced them to make the pur-

chase being the fact that the land bordered on and was bounded by the lake.

Said Chief Justice Cartron in White vsfl Burnley, 61 U. S. 235:

> *"To hold that this grant was void, because the surveyor returned an excess in his survey, without any evidence that the grantee participated in the matter, as is the case here, would be an alarming doctrine through a widespread portion of the United States. No instance is recollected where the state has interfered by suit to reform a land patent for excess in quantity. The consideration of more or less of excess, to constitute a prima facie fraud, would give a latitude of discretion to the Judicial Department over the executive and granting power, incinsistent with the independence of the latter in this branch of administration."*

This doctrine, announced in 1857 by this court, has not been departed from in any case where the natural boundary was found, or a body of water or other natural object meandered, was present on the ground to answer the call of the surveyor.

XIV.

The Circuit Court had jurisdiction to enjoin the survey.

The appellants by their 12th assignment of error question the power and jurisdiction of the Cir-

cuit Court to restrain and enjoin a survey of the lands described in the bill as ordered by the Interior Department of the United States, said Department being an executive branch of the Government of the United States, and, as such, having sole charge of the public lands thereof.

a

If the complainants own the land in dispute, this objection falls. The rule is settled by a long line of decisions of this Court, that with the issue of the patent all jurisdiction and authority of the Land Department over the land terminates. That after the issue of the patent, the matter becomes subject to inquiry only in the Courts by judicial proceeding, instituted to vacate the patent.

Stone vs. U. S. 69 U. S., 2 Wall., 525, 536 (17 L. 765, 766.)

Moore vs. Robbins, 96 U. S., 530 (24 L. 848).

U. S. vs. Schurz, 102 U. S., 378, 396 (26 L. 167).

Becknell vs. Comstock, 113 U. S., 149, 151 (28 L. 962, 963).

Iron Silver Mining Co. vs. Campbell, 135 U. S., 286 (34 L. 155).

Davis vs. Wiehbold, 139 U. S., 507 at 530.

Williams vs. U. S. 138 U. S., 514 (34 L. 1026).

Hardin vs. Jordan, Supra.

Noble vs. Union River Logging R. R. Co., 147 U. S., 165 at 170 (37 L. 123).

Mich. Land & Lumber Co. vs. Rust, 168 U. S., 589, 593 (42 L. 592).

Justice Brewer in speaking for the Court distinctly affirmed the decision in Michigan Land & Lumber Co. vs Rust.

b

Where land included in a patent of the Land Department was not at the time public property, having been previously disposed of, the Department has no jurisdiction to transfer the land, and its attempt at conveyance by patent is inoperative and void.

It is averred in the bill and admitted in the answer that prior to the survey and the filing of the official plat of this township in the General and local Land Offices, the land in controversy was unsurveyed land, and that thereafter and before the commencement of this suit, all of the land in said township was sold and patented by the Government according to said official plat. The approval of the plat by the Commissioner of the General Land Office was an act involving the exercise of judgment and discretion on the part of the Commissioner. The law vested in him the power and duty to decide this question of fact. He having passed upon the survey and approved of the plat,

and the land having been sold and patented according to the plat, this decision was conclusive.

It is only questions of law which are reviewable in the Courts.

Catholic Bishop of Nesqually vs. Gibbon, 158, U. S., 155 at 166 (39 L. 936).

Johnson vs. Towsley, 80 U. S., 13 Wall., 72 (20 L. 485).

Warren vs. Van Brunt, 86 U. S., 19 Wall., 646 (22 L. 219).

Shepley vs. Cowan, 91 U. S., 330 (23 L. 424).

Moore vs. Robbins, 96 U. S., 530 (24 L. 848).

Marquez vs. Frisbie, 101 U. S., 473 (25 L. 800).

Vance vs. Burbank, 101 U. S., 514 (25 L. 929).

Quinby vs. Conlan, 104 U. S., 420 (26 L. 800).

St. Louis Smelt. & Ref. Co. vs. Kemp, 104 U. S., 636 (26 L. 875).

Stee vs. St. Louis Smelt. & Ref. Co., 106 U. S., 447 (27 L. 226).

Baldwin vs. Stark, 107 U. S., 463 (27 L. 526).

U. S. vs. Minor, 114 U. S., 233 (29 L. 110).

Lee vs. Johnson, 116 U. S., 48 (29 L. 570).

Wright vs. Roseberry, 121 U. S., 488 (30 L. 1039).

Cragin vs. Powell, 128 U. S., 691 (32 L. 566).

Knight vs. United States Land Ass'n, 142 U. S., 161 (35 L. 974).

U. S. vs. Cal. & Ore. Land Co., 148 U. S., 31 (37 L. 354).

Burden vs. N. P. R. Co., 154 U. S., 288-237 (38 L. 992, 1001).

c

Up to the time of the disposal of the property the power to set aside surveys and plats, correct them or order re-surveys is exclusively in the Land Commissioner, and he binds the Government as to the facts represented on such plats, so far as pertains to any person buying in good faith according to such plat; and the Courts have power to protect the private rights of a party who has purchased the same in good faith from the Government, against the interference or appropriation of corrective surveys made by the Department subsequent to such disposition or sale.

Cragin vs. Powell, 128 U. S., 691 (32 L. 566).

Mullen vs. U. S., 118 U. S., 271 (30 L. 170).

Moore vs. Robbins, 96 U. S., 530 (24 L. 848).

U. S. vs. Schurz, 102 U. S., 378 (26 L. 167).

Steel vs. Smelting Co., 106 U. S., 447.

Davis vs. Wiebold, 139 U. S., 507.

d

The defendants in making the survey ordered, propose to exercise an unlawful control over this land. They justify their action on the sole ground that they are subordinate officers of the Interior Department of the United States, and are acting under and by virtue of the authority and order of their superior officers. This alone is sufficient to justify the decree.

Caldwell vs. Robinson, 59 Fed., 653, 660.

Campbell vs. Bubb, 69 Fed., 480.

Noble vs. Union River Log. Ry. Co., 147 U. S., 165.

Pennoyer vs. McConnoughy, 140 U. S., 1 (35 L. 363).

The case at bar is on all fours with Noble vs. Union River Logging Railroad Co., 147 U. S., 165 (37 L. 123). This was a bill in equity by the Union River Logging Railroad Co. to enjoin the Secretary of the Interior and the Commissioner of the General Land Office from executing a certain order revoking the approval of the plaintiff's map for a right of way over the public lands, and also from molesting plaintiff in the enjoinment of such right of way secured to it under act of Congress. This case involved not only the power of this Court to enjoin the head of a Department, but the power of a Secretary of the Interior to annul the action of his predecessor, when such action operates to give effect

to a grant of public lands to a railroad corporation. Most of the questions raised by appellants in the case at bar were raised and disposed of in Noble vs. Union River Logging Railroad Co. On page 172 Justice Brewer says:

> "But it has been well settled that when a plain official duty requiring no exercise of discretion is to be performed, and the performance is refused, any person who will systain personal injury by such refusal may have a mandamus to compel its performance. And when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it."

On page 176 says Justice Brewer:

> "A revocation of the approval of the Secretary of the Interior, however, by his successor in office, was an attempt to deprive the plaintiff of its property without due process of law and was therefore void."

This case supports Justice Brewer's opinion in Chicago & N. W. R. Co. vs. Peter A. Day et al., Railroad Commissioner of the State of Iowa 35 Fed. Rep. 866 (1 L. A. R. 744). This came upon motion for preliminary injunction to enjoin the railroad commissioner from putting in force a certain schedule of rates prepared by him for all transportation within the limits of the state. Said Justice Brewer on the last page of the case:

"I have endeavored in this case to discuss only the three most important questions, those which seem to me vital to the controversy. Before closing, I must, however notice two objections made by the defendants: First, that the publication of this schedule is, of itself, no invasion of complainant's rights; that no immediate trespass is threatened, therefore, no injunction should issue. But equity interferes to prevent a municipality of suits, and while one act may be the foundation of many suits, Courts have a right, and it is their duty in all these instances to stay that act, if unlawful."

It was on the authority of Noble vs. Union River Logging Railroad Co. that Caldwell vs. Robinson, 69 Fed. 653, was decided. This was a suit in equity brought by Caldwell to enjoin Robinson, an Indian Agent of the United States, from forcibly ejecting him from the possesion of certain lands in the Nez Perce Reservation. On page 660, the Court in sustaining the order for the injunction used the following language:

"The defendant is the agent of the Secretary of the Interior. The power of the Court to enjoin his agent has not been discussed. Generally the officers of the Department cannot be controlled by injunction or mandamus while acting in a judicial capacity in which their judgments are to be based on a consideration of facts. But in this case the action of the Land Department involved a construction of law which is not subject to the same rule. It is held in Noble vs. Union Railroad Co., 147 U. S., 165, that such officers may be enjoined from the

performance of an unlawful act, if the complainant is lawfully in possession of the premises it would be unlawful for the defendant to forcibly eject him, and he may be restrained from so doing."

A similar case is that reported in 69 Fed. 481 La Chapelle vs. Bubb, U. S. Indian Agent, etc. This was a bill filed by La Chapelle against Capt. Jno. W. Bubb, of the U. S. Army, as agent of the Colville Indian Agency, in the State of Washington, and certain Indian defendants, for an injunction to restrain said Indian Agent fro mforcibly ousting the complainant from certain land which he claimed as a settler under the Homestead Law. The lands in question had been included by the Government in allotments made to Indiana in fulfillment of treaty stipulations. The Court, on page 48 in sustaining the injunction held as follows:

"But the defendant Bubb justifies his proposed action on the ground that he is an officer of the United States Government acting only in obedience to orders from his superior officers in the Indian Department. And for that reason I deem it entirely proper that this Court do restrain him from committing a tort while assuming to act in his official capacity. *It is a general proposition sustained by this Court as often as the question has come before it*, that the agents of the Government may be restrained by injunction from doing unlawful acts to the prejudice of private rights where the remedy at law is inadequate; and from doing posi-

tive official acts for which they have personally and individually no authority, and contrary to a plain duty requiring no exercise of discretion.

Osborn vs. Bank of the United States, 22 U. S., 9 Wheat., 738, 867, 871, (6 L. 204, 235, 263).

Louisiana Board of Liquidation vs. MaComb, 92 U. S., 531, 541 (23 L. 623, 628).

Allen vs. Baltimore & Ohio R. R. Co., 114 U. S., 311 (29 L. 200).

Pennoyer vs. McConnaughy, 140 U. S., 1 (35 L. 363).

Belknap vs. Schild, 161 U. S., 10 (40 L. 599).

The last case cited was a bill in equity in the Circuit Court of the United States for the Northern District of California, by George Schild against George E. Belknap, Jas. Foster, Christopher C. Wolcott and Jesse Diamond for an infringement of letters patent granted by the United States to the plaintiff for an improvement in caisson gate. The defendant filed a plea to the whole bill alleging that the Court ought not to take cognizance or sustain the action. That Belknap was a commodore in the U. S. Navy Yard at Mare Island, California; that the defendants Wolcott, Foster and Diamond were respectively, a Civil Engineer in the Navy and an employe of the United States at Mare Island. That the only casson gate which either of the defendants had any relation with, control over

or use of within the State of California, was one constructed, manufactured and used by the Government of the United States and for their use and benefit at the Navy Yard, etc. The Court held that such officers or agents, although acting under orders of the United States, are therefore, personally liable to be sued for their own infringement. See also:

Davis vs. Grey, 16 Wall., 83 U. S., 203 (21 L. 447).

People vs. Dwyer, 90 N. Y., 402.

Morgan vs. Binghamton, 102 N. Y., 500.

Davis vs. Cook, 91 U. S., 50 (73 Cranch. 552).

U. S. vs. Lee, 106 U. S., 244 (27 L. 174 at 190).

Scott vs. Donald, 165 U. S., 107 (41 L. 648-653).

In the case of Davis vs. Gray, the State of Texas had granted to a railroad corporation of that state sixteen alternate sections of land per mile along the line of the road which was thereafter to be located. The company surveyed the lands and located its road through them. After all these things had been done the Commissioner of the State, acting under the authority of the statute of that state, which had declared the lands forfeited to the state, was selling certain of the lands and delivering patents for them to the purchasers. At the suit of the Receiver of the road the Circuit Court enjoined

the mfrom interfering with the rights of the road and the premises, and selling and conveying its lands; and the decree was affirmed by this Court.

Said Justice Lemar in the case of Pennoyer vs. McConnoughby, 140 U. S. 1 (35 L. 363 at 366) referring to Davis vs. Gray some of the expressions of opinion that case were criticised 106 U. S. 108, 224 (27 L. 174-190) and also the subsequent case of U. S. vs. Lee and In re Avery, 123 U. S., 443 (31 L. 216 at 223): "Where the objectionable expressions were examined and held to have been mere dicta, it has not been overruled, however, but on the contrary has been cited with approval and relied on as authority in a number of subsequent cases, and the underlying principles of it are regarded as sound the principal which the Court speaking through Justice Lemar in Pennoyer case. That where a suit is brought against defendants who, claiming to act as officers of the state, and under color of an unconstitutional statute, commit acts of wrong and injury to the rights of the property of the plaintiff, acquired under a contract with the state, such suits whether brought to recover money or property in the hands of such defendants unlawfully taken by them in behalf of the state or for compensation or damages, or in a case where the remedy of law is inadequate for an injunction to prevent such wrong and injury, the suit can be maintained."

The case of Pennoyer vs. McConnoughy was a suit in equity by the appellee, a citizen of California, against the appellants, who, under the constitution of Oregon, as Governor, Secretary of State and

Treasurer of State comprised the Board of Land Commissioners of that state, to restrain and enjoin them from selling and conveying a large amount of land in that state to which the appellees asserted title. There was a demur against the bill on the ground that the suit was practically against the state, and was, therefore, prohibited by the 11th Amendment to the Constitution. The demur was overruled. This Court held that the officers of a state may be enjoined from executing a statute of the state which is in conflict with the Constitution of the United States when such execution would violate and destroy the rights and privileges of the complainants.

E.

The Act sought to be Enjoined in this suit is a Ministerial Act.

It is apparent from the most superficial examination of the facts in this case that the act of the Surveyor General is a ministerial act. The Commissioner of the General Land Office under the instructions of the Secretary of the Interior ordered the survey. The Surveyor General carries out his instructions; there is no opportunity here for defendants to exercise discretion.

In Noble vs. Union River Logging Railroad Co., Supra., said Justice Brown in delivering the opinion of the Court:

"It was held by this Court as early as 1803, in the great case of Marbury vs. Madison, 5 U. S. 1 Cranch 137, that there was a distinction between acts involving the exercise of judgment or discretion and those which are purely ministerial. That, with respect to the former, there exists, and can exist no power to control the executive discretion, however erroneous its exercise may seem to have been, but with respect to ministerial duties, an act or refusal to act is, or may become, the subject of review by the Courts. The principle of this case was applied in Kendall vs. U. S., 37 U. S. 12 Pet. 524 (9 L. 1181), and cites the following cases in suppore of the principle:

Decatur vs. Baulding, 39 U. S., 14 Pet., 497 (10 L. 559).

Kendall vs. Stokes, 44 U. S., 3 How., 87 (11 L. 506).

Brashear vs. Mason, 47 U. S., 6 How., 92 (12 L. 357).

Reeside vs. Walker, 53 U. S., 11 How., 272 (13 L. 693).

Halloway vs. Whitley, 71 U. S., 4 Wall., 522 (18 L. 335).

U. S. vs.Seamen, 58 U. S., 17 How., 225 (15 L. 288).

U. S. vs Guthrie, 58 U. S., 17 How., 284 (15 L. 102).

U. S. vs. Edmunds, 72 U. S., 5 Wall., 563 (18 L. 692).

Gaines vs. Thompson, 74 U. S., 7 Wall., 347 (19 L. 62).

Cox vs. U. S., 76 U. S., 9 Wall., 298 (19 L. 579).

U. S. vs. Schurz, 102 U. S., 378 (26 L. 167).

Butterworth vs. U. S., 112 U. S., 50 (28 L. 656).

U. S. vs. Black, 128 U. S., 40 (32 L. 354).

"In all these cases," says Justice Brewer, "the distinction between judicial and ministerial acts is commented upon and enforced." And he further adds. "We have no doubt the principle of these decisions applies to a case wherein it is contended that the act of the head of a department, under any view that could be taken of the facts that were land before him, was ultra vires, and beyond the scope of his authority. If he had no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused an act which the law plainly required him to do."

XV.

Defendants must show authority sufficient in law to protect them.

This suit is not brought against the defendants because they are officers and agents, but by reason of their acts as individuals. And the Court is not ousted of its jurisdiction because they assert authority as such officers and agents. To make out their defense they must show that their authority is sufficient in law to protect them.

Mitchell vs. Harmony, 13 How., 115 (14 L. 75).

Bates vs. Clarke, 95 U. S., 204 (24 L. 471).

Meigs vs. McClugs, Lessee, 9 Cranch, 11 (3 L. 639).

U. S. vs. Lee, 106 U. S., 210 (27 L. 178).

Wilcox vs. Jackson, 13 Pet., 498 (10 L. 264).

Brown vs. Hogen, 21 How.. 305 (16 L. 125).

Grisar vs. McDowell, 6 Wall., 346 (18 L. 864).

Noble vs. Union River Logging Co., Supra.

Beach on Injunctions, Sections 1373-4-9.

Belknap vs. Schild, 161 U. S., 10 (40 L. 602).

Stanley vs. Schwalby, 147 U. S., (37 L. 259 at 264).

Caughan vs. Macon & C. R. 109 U. S., 452 (27 L. 994).

Virginia Coupon Case 114 U. S., 287 (29 L. 192).

XVI.

This is a case which calls for the equitable interference of this court.

The bill and the answer show that a survey of the land in controversy will result in the unnecessaary destruction of much valuable timber. That it will cast a cloud upon the title of the complainants, and will involve the owners in a multiplicity of suits. The complainants under any one of these

general heads of equity are entitled to a perpetual injunction as prayed for in the bill. The bill was not demurred to by the defendants, but was answered; under the general prayer for relief, the complainants were entitled to such relief as the facts stated in t ehbill justify.

English vs. Foxall, 27 U. S., 2 Pet., 595 (7 L. 531).
Tayloe vs. Merchants Inc. Co., 50 U. S., 9 How., 390 (13 L. 187).
Texas vs. Hardenberg, 77 U. S., 10 Wall., 68 (19 L. 839).
Jones vs. Doren, 130 U. S., 684 (32 L. 1080).
Landis vs. Oles, 9 Minn., 90 (Gil. 79).
Gerdtzen vs. Cockrel, 52 Minn., 509.
Huyct vs. Graham, 82 Mich., 353-356.
Story Eq. Pl., 42.
Vol. 1 Garland and Rawlsoon, Fed. Prac. 266.

As to the destruction of timber, every witness examined on the subject, including the defendant Croswell, swears that it will be necessary to cut more or less timber in order to make a currect survey of this land. And all of the witnesses sworn on the subject say that the remainder of the timber would be in great danger of fire by reason of such cutting. Merrit S. Cook, 485 Record; C. E. Bailey, Fol. 510, 511, 512, Record; Defendant Crosswell admits that the timber is very thick where the lines would have to be run, and that in order to make a

survey with such a degree of care as the surroundings would require, a transit line of at least two feet wide would have to be cut. The other witnesses testify that a transit line at least six feet wide would have to be cut. Mr. Croswell admits in his testimony (Fol. 598) that the country is somewhat rolling. And I think it is self-evident, something of which the Court will take judicial notice, that through such a country a transit line only two feet wide would have little or no value in making survey.

Every witness sworn on the subject testified that if timber has to be cut in order to make a survey, the standing timber will be in great danger of fire which is lable to take in the tree tops and down timber cut in running the transit line. This is self-evident.

Erhardt vs. Boaro, 113 U. S. 537 (28 L. 1116).

XVII.

Not only casts a cloud upon the title bu would cause a multiplicity of suits.

If the complainants owned these fractional lots with boundaries extending to the actual waters of the lake, *it is obvious from the facts disclosed by the record that a re-survey would not only cast a cloud upon the title, but would cause a multiplicity of suits.* It is allaged in the bill and admitted in

the answer that the lands in controversy were entered upon prior to 1892 by certain settlers who have since occupied it claiming the territory to be unsurveyed public lands of the United States, and it was upon this petition that the survey was ordered, Fol. 27 of Record, Bill. Fol. 115 Record, Answer. The record of this proceeding before the Land Department of the United States shows that the Government asserts proprietorship in these lands in ordering the survey. It is obvious that after surveying and platting the land that such plat would be recorded by the Land Department and the land in controversy would be claimed as public lands of the United States, and that actions against the several settlers or commenced by them would necessarily result.

Equity has jurisdiction to prevent a cloud from being cast on plaintiff's title by restraining the consummation of proceedings which would result in creating a cloud.

Vol. 17 Enc. of Pl. & Prac, page 288.

Conkey vs. Dike, 17 Minn., 457 (Gil. 434) was an action to have a mortgage adjudged satisfied and for an injunction against foreclosing it.

Huntington vs. Central Pac. R. Co., 2 Saw. U. S., 403.

Sneathern vs. Sneathern, 104 Mo. 201.

Chapman vs. Brewer, 114 U. S. 158.

Lyon vs. Allen, 130 U. S. 177.

Redman vs. Parkingham, 66 Ill. 434.

Frederick vs. Ewrig, 82 Ill. 363.

Rosser vs. Fox, 65 Ill. 200.
Maurice, etc., Co. vs. Jersey City, 12 N. J., Equity 227, 545.

King vs. Townshead, 141 N. Y. 358.

Equity will always interfere to prevent clouds from being cast upon a title and will interfere to restrain a defendant from proceeding in an illegal act, which, if completed, will necessarily cast a cloud upon that title and naturally diminish its value.

De Witt vs Van Schoyk, 110 N. Y. 342.
Conrad vs. Smith, 32 Mich. 429.

In De Witt vs. Van Schoyk an injunction was granted to prevent the closing of a highway and opening another although the damages apprehended could be satisfied by a pecuniary award.

All of the cases citey in this subdivision were decided on the ground that equity would restrain an unlawful act of a public officer when such act would naturally diminish the value of the realty.

If the land belongs to the complainants the proposed survey is unlawful. The complainants do not ask an interference in the lawful exercise of the duty of an official in a co-ordinate branch of the Government. Our whole contention is that the proposed action of the officers and agents of the Government in relation to this land is unlawful and entirely outside of their official duty.

Where there is no complete and adequate reme-

dy at law equity will assume jurisdiction of a bill to quiet title or prevent a cloud.

Lyon vs. Alley, Supra.
Chapman vs. Brewer, Supra.
Phelps vs. Harris, 101 U. S. 370.

XVIII.

The proposed Survey will Furnish Foundation for Many Suits.

It is evident that the carrying out of the order of survey which was enjoined by the Circuit Court, would have been the foundation of many suits: First, such order would on its face establish boundaries to the fractional lots. Said boundaries would cut off a considerable part of complainants' land, and all of their riparian rights as owners of the land bordering on the lake. On its face it would assume ownership in the Government of a large amount of complainants land, now occupied by settlers claiming it under homestead rights. This would involve not only a suit in equity to clear the cloud, occasioned by the filing of a plat of a resurvey, on complainants' title, but also actions of ejectment against the several settlers.

We now call the Court's attention to the special instructions commencing at Fol. 165, and being defendants' exhibit "D," annexed to their answer:

Thos. H. Croswell, Deputy Surveyor,
St. Paul, Minnesota.

Sir: In addition to the printed instructions contained in Manual of Instructions to Surveyors General dated June 30, 1894, furnished you, the following special instructions are issued for your guidance in the execution of surveys under your contract No. 73 of this date.

The execution of surveys specified in your contract will require:

1. The establishment of certain section, quarter section and meander corners on the north boundary of township No. 57, N., R. 17 W.

2. The temporary establishment of the corners of sections 1, 2, 11 and 12—sections 11, 12, 13 and 14—sections 10, 11, 14 and 15—sections 9, 10, 15 and 16—sections 8, 9, 16 and 17 and sections 4, 5, 8 and 9 and the quarter section corners between sections 9, 10 and (10 and) 11.

3. The establishment of permanent meander corners and the survey and permanent marking of the meander line of Cedar Island Lake as given in the original notes of Henry S. Howe, Deputy Surveyor, approved by the Surveyor General of Minnesota, August 19, 1876, known and described as the "Old Meander Boundary," it being the boundary line between the patented land and the public land, to be surveyed as provided for under your contract.

4. The establishment of proper permanent meander corners at ordinary high water mark in the shore of Cedar Island Lake and the meandering

of said shore line on the ground at ordinary high water mark.

5 The subdivision of all lands between the "Old Meander Boundary" and the ordinary high water mark of the lake.

You are directed in the first place to give early and earnest attention to the north boundary of the township, and if conditions not clearly provided for herein are found to exist, you are instructed to fully report the facts to this office for further instructions.

The retracement of the north boundary will begin at the most easterly, fully identified, original corner west of Cedar Island Lake and proceed easterly. If the corner of Sections 3, 4, 33 and 34 is found as represented on the diagram furnished you herewith some 20 chains north of the straight line joining the township corners, or its bearing trees not agreeing with original notes, and by measurements much too near the quarter corners between sections 33 and 34, or the corner of sections 33, 34, 27 and 28 of the township on the north, *such facts will indicate if not prove that said corner has been moved from its original position and may require its obliteration and proper re-establishment in its original position.* You will fully satisfy yourself in regard to proper identification and location of the section and meander corners west and east of the lake.

(Subdivision 3, Fol. 170). While the propriety of the restoration of interior section corners by measurement on meridional section lines is not questioned, it may be observed that inasmuch as

all the notes are admitted to be fictitious they cannot be depended upon in any one direction more than another; consequently section corners may be located on an east and west line and in this case with evident advantage. Measurement from the south boundary of the township will not be required."

This is not an original survey. All of the land in township has been sold and patented by the Government according to the Government plat. And, therefore, in making a survey of the land in the township, the rights of all land owners must be regarded. If the section corners are established by measurement on the east and west line, the one-quarter of a mile excess in the length of the township north and south is by the method adopted in this order thrown entirely in the north tier of the sections. We have set out in full the statute of the state of Minnesota under and by virtue of which the Patton survey was made. For that part of this brief which explains the correct location of Ely Lake see page 78 and 82.

The following undisputed testimony shows that the survey sought to be enjoined would affect the boundary of a large amount of property:

TESTIMONY OF C. E. BAILEY, Record, Fol. 527-508.

> Q. I would like to ask you, Mr. Bailey, what property, if any, would be effected by a re-survey of the north portion of this township and how it would be effected?

A. There are ten 40s underlaid with are in sectionst 5 and 6 with a tonnage of twenty million tons of ore on which mining has been in progress for five years and the section corners as set by the Patton survey has been accepted and month by month these have been used in mining to the lines of the different 40s for several years and a great deal of complication and expensive litigation is bound to follow any change of the Patton corners.

Q. State what other property you have mentioned would be affected by a survey?

A. The boundaries of timber lands in a great many cases would be and nearly all the timber cut in the last four years since the Patton survey has been cut on the lines based on the Patton survey. The owners applied through the county to have the question of boundaries settled and it authorized the County Surveyor to proceed and the owners of larger proportions of values in the township have accepted and been using these lines for several years.

Q. Just look at that Mr. Bailey?

OFFERS IN EVIDENCE COMPLAINANTS' EXHIBIT "E."

Q. This paper is designated Exhibit "E," can you say whether—what survey, if any, was called out pursuant to the resolutions of the Board of County Commissioners, mentioned in Exhibit "E?"

A. The Patton Survey was the outcome of this by the authority of the Board of County Commissioners.

Q. He acted under authority of this?

A. Yes, sir.

Q. Since that survey these mines have been operating under that survey, and a change would create trouble?

A. Yes, sir, conflicting boundaries in quite a number of cases, representing a large tonage of ore, would be affected by any change.

Q. In making a re-survey of this township state whether it would be necessary or not to have any amount of timber cut in order to make an accurate survey?

A. Several miles of lines would have to be chopped and a good deal of timber destroyed and the down timber would leave a danger of fire, it would be very objectionable.

No attempt is made to deny the testimony of Mr. Bailey.

The Court will observe that the Patton Survey, so-called, was made pursuant to the order of the County Commissioners of St. Louis County, under the authority conferred on that body by the section of the statutes of Minnesota above referred to, pursuant to the application of a number of property owners in the township to settle the boundaries of their lands. That by this statute the points where the posts or monuments are relocated and re-established, as was done by the Patton Survey, should be taken and considered as prima facia evidence that such points are the points where the section posts or monuments were established by the United States Government.

The Court has observed that by the Patton Survey the corners to secs.4, 5, 8 and 9 and 5, 6, 7 and 8, were established first by surveying around the township, and corners were located by intersection lines after correcting the proportionate distances

each way. Fol. 438-439-440. Testimony of Merritt S. Cook; Fol. 576; testimony of Defendant Croswell. That by this survey the overplus in the northern part of the township was divided proportionately according to the old or Government survey, so as to make each section in the township equal—Fol. 441-2.

Defendants' Exhibit "1," to which we have previously referred, is before this court. It shows two theories of surveys of the two northern tiers of sections of township 57 north, range 17 west. The red lines indicate a survey of the township measuring each line north and south eighty chains from a proper corner of the southern boundary of the township, and the east and west lines are measured proportionate distances according to the original Government survey from the eastern township line. —Fol. 566-7 of Record. This is the theory upon which the Government has ordered this survey to be made, as the surveyor is expressly instructed in the order, the execution of which is sought to be enjoined, that measurements from the southern boundary of the township will not be required.—Fol. 170. In the survey ordered by the Government, all the surplus territory is thrown in the north tier of sections (Fol. 576), by which system the lake would be thrown too far north and too far east.—Fol. 443. Note also original Exhibit "1" and defendants' Exhibit "B." By the Patton survey, the lines of all the proptrty holders in the township are regarded and each is given his proportionate share of the excess, and each loses his proportionate share of the shortage. A glance at De-

fendants' Exhibit "1" showing the lines of survey as now established by the order of the Board of County Commissioners of St. Louis County and the lines of survey as they would be run under the system in question, which was ordered by the Commissioner of the General Land Office, it is apparent at once that a multiplicity of suits would result not only as between the complainants in this action and the various settlers who have located on portions of these fractional lots claiming under homestead rights, but also between the owners of property in other portions of the territory covered by the order for survey. These lands covered by valuable timber, or from which timber has been removed, the mines of iron ore now existing, and the immence tonnage which has already been mined and removed from the land, *would furnish subjects of litigation to an extent that can hardly be imagined. Years would elapse before the litigation over these disputed lines would be settled. Business enterprise of large dimentions would be hampered, and the lines in all of that portion of the township covered by this survey would be thrown into confusion.*

Under the Patton survey above referred to, the lines of this valuable mining property, and in fact all lines in that part of the township, are looked upon as settled. And all of the remaining portion of this township can, by the lines and system established under the Patton Survey, be readily run and corners established. We can hardly conceive of a case in which more litigation would be likely to follow should this order of survey be sustained.

And it rests with this Court to determine that question.

By the Patton Survey, the accuracy of which has been vouched for by the three able civil engineers and land surveyors, and which has not been questioned or attempted by the defendants, the interior lines and corners of these two northern tiers of sections covered by the order for survey has been established. Under that survey the riparian rights of every owner of a fractional lot bordering on this lake has been recogni[z]ed; and by a continuation of that survey, to use the language of the different surveyors and engineers who have been sworn in this case, "by tying on the corners established by the Patton Survey every corner of the township canbe re-established."

We would call the Court's attention in this connection to complainants' Exhibit "D" (page 16 Printed Record) *which shows the deep and permanent lakes in this township which were sold by the Government as land. It will be noticed that St. Mary's Lake occupies a considerable portion of Sections* 8, 9, 16 *and* 17; *that there is another small lake in the western part of Section* 17, *the area probably something over forty acres; in the north half of section* 20 *more than* 100 *acres are occupied by one of these lakes; still another lake occupies the greater portion of the Southwest* 1-4 *of Section* 20, *the east half of section* 30, *and a considerable portion of the Southwest* 1-4 *of Section* 30 *and nearly half of the Northeast quarter of Section* 29; *a considerable part of sections* 27 *and* 28 *and a portion of sections* 22 *and* 26 *is taken up by another*

lake; still another in the south half of Section 28 *and north half of section* 33 *and a portion of the northwest quarter of section* 32*; a large part of section* 32 *is also occupied by still another lake.* The Government has received compensation for these various bodies of water and has assumed to patent them. Under the principle of the Patton Survey, and which we contend for , the lines of the owners of the land bordering on these various bodies of water can be easily established. They present problems to surveyors and lawyers alike, which are frequently met and passed upon in all of the timber states, especially in northern Minnesota and northern Michigan. No new principles are involved; and in the State of Minnesota particularly the decisions are so clear, and so often re-affirmed that the rights of the parties are easily determined.

It is true that in Davis vs. Board of County Commissioners, 65 Minn. 310 at 313, the Court held the statute under which the Patton survey was ordered unconstitutional, for the reason that it deprived the land owners of their property without due process of law (67 N.W. 997. This was an action to recover for services under the statute in establishing section corners, and except for the unlawful mode declared for recovering compensation for survey, the statute to establish boundaries would have been upheld, said the Court, but if the lines and corners are correctly established they will stand whether the law providing for the compensation is upheld or not.

If we are correct on the proposition that the complainants are the owners of the land in contro-

versy, that the Government has no jurisdiction to order or cause a survey of the same, there can be no question but that the Circuit Court had jurisdiction of the defendants in this action. That the decree of said Court was justified by the facts found and was justified by the law; that the Court of Appeals correctly affirmed the decree of the Circuit Court; that the decree was justified by the facts established by the undisputed evidence in the case; and that the complainants were entitled to commence and maintain this action; that the Circuit Court had power to enjoin the survey.

XIX.

Complainants have no adequate remedy at law.

The defendants have contended on the previous hearings in this case that the complainants have an adequate remedy at law, and, therefore, a bill in equity will not lie. We would ask the gentlemen who represent the officers of the Government in this suit to point us to a legal remedy which will remove the cloud cast on complainants' title by the unauthorized action of the officers of the land department of the United States in ordering this survey, which order has for the time being destroyed the marketable value of the complainants' land. We would ask them to point out to us a legal remedy which will prevent the cloud being intensified by

the surveying and platting of the land of complainants', assuming to act under the authority of the Government of the United States, and the filing of such plat for record in the General Land office of the United States and in the local United States Land Office in Duluth, Minnesota, by which the Government will assume to be the owner of the land in dispute.

It is a subject of which the Courts will take judicial notice that such acts constitute clouds upon complainants' title; that it destroys its market value; that the acts of proprietorship which the officers of the Land Department of the United States have already exercised over this land necessarily prevents the complainants from exercising over it the ordinary acts of ownership, prevents them from cutting such timber on the land as should be cut in order to save it, prevents their selling the land or the timber should they desire, or their necessities require it. This Court will notice the conditions as they now exist, and have existed since the Government asserted proprietorship over this land, and the result which must, and have, necessarily followed from the cloud cast upon complainants' title.

It is a fact of common knowledge that conditions may exist about a tract of timber that become a constant menace to its safety. That by reason of conditions that frequently arise, the danger from fire renders it necessary to cut such timber in order to save it. It is not necessary here to state that such conditions already exist. It is suffifient to know that they are liable to arise at any time.

In Sharon vs. Tucker, 144 U. S. 533-534 (36 L.

535), Judge Field while conceding the existence of the general rule that possession of real estate is required as a condition of equitable relief in certain cases, held the rule not applicable in cases where there was danger of a multiplicity of suits by or against many different parties. He also refused to apply the rule in Sharon vs. Tucker, which was an action by one out of possession who had acquired title by adverse possession to have his title adjudged complete and made a title of record.

XX.

Reference to cases cited by defendants in this action.

The questions of law raised by appellants have been settled by the repeated decisions of this Court and by the Supreme Court of the State of Minnesota. We wish to call the Court's attention to some of the decisions which are cited by the defendants in this case.

In Litchfield vs. Register and Receiver, 9 Wall. 575 (19 L. 681), this Court held that the judiciary could not interfere with executive officers in the discharge of their official duties involving the exercise of judgment of discretion, but where the duties are of a character purely ministerial and involve no exercise of judgment or discretion mandamus or injunction will lie.

The Court held the same rule in Craig vs.

Lietinsdorfer, 123 U. S. 129. This was a suit in equity to obtain the cancellation of an approved plat, transferred by the United States, of a tract of land, part of the Las Animas grant, and to enjoin him from prosecuting any suit at law or in equity on such plat as evidence of title, on the ground that it was illegally and wrongfully obtained. The Court here held that the suit could not be maintained by one who does not claim any part of the land embraced in such plat, having no equity therein, but claimed an undivided interest in the residum of the grant that may remain after satisfying the claims of actual settlers. Said Justice Mathews in this case: "He does not allege or claim that any land belonging in equity to him was awarded to others. He admits that he was not an actual settler upon or holding any part of the tract."

The Court will also observe that in the case at bar the claim of the complainants is exactly that which the Court says was not claimed in the case of Claig vs. Lietensdorfer.

The case of Granger vs. Swart, 1 Woolw. 88, was simply a charge to the jury nisi prius, was according to this directory contrary to the decision of the Supreme Court of the State of Minnesota, in a long line of cases which we have cited in the brief, and a long line of cases decided by this Court, many of which we have cited in our brief.

Lammers vs. Nissen, 4 Neb. 245, is based upon no authority except that of Granger vs. Swart. While the decision in Lammers vs. Nisson in the Supreme Court of the United tSates, was affirmed by the Supreme Court of the United States, 154 U.

S. 650, it was upon the ground that the question presented to this Court was one of fact only, that the parties did not differ as to the question of law. There was no consideration of the case on its merits.

And in the case of Bissell vs. Fletcher and Harrison vs. Stipps and other cases decided in the Supreme Court of Nebraska was reviewed by the court in the late case of McBride vs. Whitaker, 90 N. W. 966, wherein the court held it to be the settled rule of Nebraska that

> "A grant of land bounded upon a non navigable river made by the general government with reference to the plat of the survey which shows a meandered line along the river bank, conveys to the grantee title to such unsurveyed island or parts of islands as lie within the limit."
>
> "The power to make and correct surveys of the public lands belongs exclusively to the political department of the general government, and a plat of a survey made and approved by that department cannot be impeached in the courts except upon a direct proceeding for that purpose."

Fulton vs. Frandolig, 63 Tex. 380. In this case there was no brief on one side and only Texas were cases cited. No reasons were assigned for the decision, the court holding that the land was not included in the survey. It was a case arising under the state law and not involving public lands of the Government of the United States.

The case cited from 83 Texas related to lands surveyed under the State law, not to Government lands. It was a large tract of land through which

Devil's river was supposed to run, and he so designated it on his plat; but the river was not platted or designated as a boundary. His lines purported to cross the river, but were not surveyed. He mistook a dry canyon for Devil's river, the latter stream being some two or three miles distant. There was no question of meandering or meander lines in the case.

The case of Bates vs. Ry. Co., 1 Black. 204: In this case there were two channels of the Chicago river. The survey and meandering was with reference to the north channel; and hence their object, the north channel, and not the meander line, was taken to be the boundary. It being a similar case to that of Horn vs. Smith.

In McCormick vs. Hughes, 78 Ill., the land in question was bounded by a meander bayou, which object was the boundary.

Turner vs. Ry. Co. 112 Mo. 545, does not support the case of Gazzam vs. Phillips, where it was held that the boundary established by the surveyor and shown on the plat with reference to which the patent is made, is to be taken as the actual boundary of the land, though it has been erroneously established and contrary to law; though such boundary was not as located and designated on the plat.

King vs. Watkins, 96 Fed. presents merely the instructions to the jury nisi prius. In that case there were complete courses and distances established as actual boundaries, intended to be such and the designated call, which was rejected, was deemed to be a "random" and mistaken one. The clear distinction between that case and the case

of Gazzam vs. Phillips and others is the fact that the meander line is not intended as a boundary at all, whereas in the other cases referred to, lines of actual boundaries alone are involved.

The case of Glenn vs. Jeffry, 75 Iowa 20, is commented upon in the same Court in Schlosser vs. Crookshank, 96 Iowa 65 N. W. 344, 345. The rule of the case cited from this basis is that the meander line is not a boundary line, but the owner of land adjoining the meander line takes title to the high water mark of the stream or body of water. In such cases the proposed owner is a riparian owner, his title extends to and embraces all lands lying between such meander line and the high water mark, lying between such stream and the body of water.

Grant vs. Hamphill, 92 Iowa 218, was the case of a lake designated as a boundary, impossible as such because of its non-existence; there being no body of water to which the meander line could be referred. This is also commented on in Schlosser vs. Crookshank.

In Whiteside vs. U. S., 93 U. S. 247 (23 L. 882) the Court held that the Government was not bound by the unauthorized acts of its officers. That is true as a general proposition; but where power has been delegated to certain officers to act, and that act involves the exercise of judgment and discretion the Government is bound, and, again, it is estopped the same as an individual.

In Moffat vs. U. S., 112 U. S. 24 (28 L. 623) the case turned on the point that a patent issued by the Government to a fictitious person passed title to no one, and was therefore void. The Court

expressly distinguishing this case from U. S. vs. Throckmorton, Vance vs. Burbank, and referring to the language used in Polk vs. Wendell, 5 Wheat. 293 (5 L. 92); it was that used with reference to collateral attacks on patents in cases where the irregularities were committed by officers in the exercise of their admitted jurisdiction, and can have no application to acts of officers in fabricating documents in the name of persons having no actual existence.

The Court also said in Moffat vs. U. S., "A strenuous effort is made by counsel to bring these cases within the doctrine declared in U. S. vs. Throckmorton, 98 U. S. 61 (25 L. 93) and Vance vs. Burbank, 101 U. S. 514 (25 L. 929) but without success. It was held in those cases that the fraud which will justify the setting aside of the judgment of a tribunal specially appointed to determine particular facts, must be such as prevented the unsuccessful party from fully presenting his case or general operation as an imposition upon the jurisdiction of the tribunal. *Mere false testimony or forged documents are not enough, of the disputed matter has been actually presented to and considered by the tribunal.*

The case of Polk vs. Wendell above referred to, was an action of ejectment by the lessor of Pope, the grantee, from the Governor of North Carolina, on the 6th of May, 1800, against the defendant who was in possession of the tract under grant from the Governor of North Carolina, bearing date the 28th of August, 1795. A verdict and judgment was en-

tered for the defendant. On page 310, 96 L., the Court held as follows:

> "As the explanation does not come upon a misdirection of the Court but generally on a rejection of evidence offered, the only remaining question arising on its legal competency. *There is certainly a palpable distinction between the case of an original grantee and the subsequent purchaser without notice.* There can be no reason why the grantee should be favored b ythe leniency of the Court; *but the latter finding the grantee in possession of the patent of the State, which on its face presents nothing to put him on his guard, has strong claims upon the favor of the Court and justice of the country.*"

On page 304, p. 95 L. Rep., the Court says:

> *"It will be perceived that as to irregularities committed by the officers of the Government prior to the grant, the Court does not express a doubt but that the Government and not the individual must bear the consequences resulting from it;* on the contrary, it declares that the existence of the grant is in itself a sufficient ground in which every man may infer that every prerequisite has been performed."

In this connection I would call the Court's attention to one of the allegations in the bill, Fol. 7 Printed Record: That prior to the approval thereof, that is, the official plat, complaint was duly made and filed in the Department of the said United States General Land Oiffce questioning the accu-

racy and good faith of the survey, and requesting that the said department of the General Land Office examine into the same and suspend approval of said plat, pending such examination; that on the 11th day of June, 1879, the Commissioner of said United States General Land Office denied this application, and thereupon said plat was approved, notwithstanding said complaint, by the proper officers of said Government of the United States. Also to Fol. 110, Defendants' answer: The defendants admit that the Commissioners of the General Land Office approved said survey and plat after complaints were brought to his notice touching the accuracy thereof, but allege that said complaints were withdrawn by the persons presenting them, before such approval.

We would again call attention to the opinion in the case of Moffat vs. U. S., which was an action in equity to cancel two patents of the United States. The Court used the following language:

> *"The presumption as to the regularity of the proceedings which precede the issue of a patent of the United States for land is founded upon the theory that every officer charged with supervising any part of them and acting under the obligations of his oath will do his duty, and is indulged as protection against collateral attacks of third parties."*

It may be admitted as stated by counsel that if upon any state of facts the patent might have been lawfully issued the Court will presume as against such collateral attacks, that the facts existed.

In the Moffat case a patent was issued to a fictitious grantee, hence as there was no grantor to take the title, and such being the case, no title could pass by the grant.

> "But the presumption has no place in a suit by the United States directly assailing the patent and seeking its cancellation for fraud in the conduct of its officers."

Again we find a further interpretation: Said Justice Field in United States vs. Iron Silver Mining Co., 128 U. S. 673 (32 L. 573: "In this connection a word should be said of a paragraph in the opinion in Moffat vs. United States, 112 U. S., 24, 30 (28, 623, 625). That was a suit to set aside a patent issued to fictitious parties, and the Court referring to the presumption which is indulged as a protection against collateral attacks upon a patent by third parties, said:

> "It may be admitted as stated by counsel, that if, upon any state of facts, the patent might have been lawfully issued, the Court will presume as against such collateral attacks, that the facts existed; but that presumption has no place in a suit by the United States directly assailing the patent and seeking its cancellation for fraud in the conduct of their officers. It was not intended by this language to hold that presumptions in favor of the regularity and lawfulness of patents issued did not apply in suits by the United States to vacate them for fraud; but that the presumption mentioned—that is, when a patent is assailed collaterally, if it could be sustained upon

any state of facts, the Court will presume that such facts existed—could not apply in suits by the United States assailing the patent for fraud in the conduct of its officers."

In Gazzam vs. Phillips, 61 U. S. 20 How. 372, it was *held that the Court had no power to get behind the description in the patent.*

The case of Horn vs. Smith, upon which so much reliance is placed by the appellants, re-affirrmed the rules laid down by this Court in Harden vs. Jordan, Mitchell vs. Smale, Railroad Company. vs. Schurmier and others; in this case it was obvious that the Surveyor ran the lot lines of the lot in question to a bayou, which he mistook by a mark in his field notes and plat as the Indian River. The bayou was there plain and open to be seen, and fitted as the meander boundary with all of the other calls of the survey. The natural water course was there to correspond with the survey and plat.

In the case at bar the meander line is shown on the official plat and by the field notes referred to in the patents as marking the actual margin or bank of Cedar Island Lake, a navigable body of water, and, therefore, has included in the lots so bounded riparian rights upon the lake. There was no other water boundary to meet the call. And in Viles vs. Cedar Point Club, here the Court expressly re-affirmed the same legal proposition as in Horn vs. Smith, the facts, however, were different. In this case the plat and field notes show that the boundary meander lines were not on the banks or margin of navigable waters but of a flag marsh.

As to the case of the French-Glenn Live Stock

Co. vs. Springer, 22 Supreme Court Reporter 566, appeal fro mthe Supreme Court of Oregon, 58 Pacific 102, it was not claimed that the meander line as located by the field notes differed from the actual shore line of the lake at the time of the survey, and the plat referred to in the patent was made. The plaintiff's claim was that the meander line and actual shore of the lake were the same at the time of the survey, and that the lake had receded from the meander line, and by means of such recession the land formed by it became the plaintiff's as a reliction. The plaintiff did not claim that the land in controversy was included within the description in the patent, but it claimed that, by reason of the recession of the lake from the parcel of land which was described and conveyed by the patent to them attached to the latter as reliction, and thus became its property. In this manner the question of fact was presented in the case whether there was a lake whose shore was at the meander line and whcih lake had afterwards receded, leaving as reliction the land in dispute. This question of fact was submitted to the jury, who found that there had not been such a lake, and therefore, there had not been such recession, and no land had been formed by a recession of the lake from the meander line.

It will thus be seen that the plaintiff's claim made its title dependent upon the fact of recession of the waters of the yakè from a designated line, instead of making the title dependent upon the fact that the land claimed was included within the boundary fixed by the patent.

Said Justice Shiras in disposing of the case:

> "For the reasons already given, we think that while the plats are conclusive as to the meander line, and while if there was a lake abutting on or to the north of the land, the plaintiff in error would take all land between the meander line and the water and all accretion, it was competent for the defendent to show that there was not at the time of the survey, nor since, any such lake, and to contend that in such a state of facts, there could be no intervening land and no accretion by reliction."

It will be remembered that the lots in controversy in French-Glenn Live Stock Co. vs. Springer were the northerly lots of the township, so that the north line of the lots was the north line of the township; and in this statement of Justice Shiras is a distinct recognition that the plaintiff would have taken all the land between the meander line and the lake, if there had been in fact a lake to the north of th lats as they appear on the Government plat. To do this the town line would have had to be crossed.

In White vs. Lunning, 93 U. S. 514 at 525, in the description there was included two monuments, a certain fence and a certain ranch, which, if adhered to, would defeat the deed by making an impossible description. After the elimination of these monuments the description was consistent and complete. It was held, that in order to complete a possible description and preserve the deed from defeat, the reference to the monuments might be rejected as surplusage.

As to the remark by Mr. Justice Bradley in

Mitchell vs. Smale to the effect, that in case of a plain and obvious mistake of the surveyor in running a meander line, the Government would have the right to recall the survey and have it corrected, and that such mistakes do not bind the Government. There is nothing inconsistent in this, for he undoubtedly wished to be understood, that a suit in equity could, under certain circumstances be brought by the Government, where the rights of third parties had not intervened.

Many of the cases cited by the defendants are based on the charge delivered to a jury by Justice Miller in Granger vs. Schwartz, 10 Fed. Rep. 961. This was a case in which, between the date of the Government survey and the date of the entry, a considerable tract of land had been added to the riparian tract by accretion. No claim was made by either party that the meandered line as originally run did not exactly coincide with the then existing watel line. The only question of law which Judge Miller was required to pass upon was, whether accretion which, between the date of survey and the date of entry, is added to Government land, border ing upon the water courses, will pass under an entry of the Government land to which they have thus become joined. This court thereafter decided, in Jeffries vs. East Omaha Co., 134 U. S. 178, that it will so pass. Judge Miller's charge was given, however, upon the assumption that a meander line is always and everywhere a boundary line. This charge was given by Judge Miller in the trial nisi prius before the decision in Schurmeier vs. Railroad Company. This charge of Judge Miller was expressly

controverted in the East Omaha Land Co. case, as we have before observed; the court holding:

> "We are, therefore, of the opinion that the patent conveyed to the patentee the title to all accretion which had been formed up to that date."

Again referring to the French-Glenn Live Stock Co. case, this court there declares that

> "If, at the time of the survey, there was a lake abutting on or at the north of the lots, the plaintiff in error would take all land between the meander line and the water and all accretions."

In the case at bar, the fact is established that the lake was plain and open to be seen; it is the natural boundary concerning which there can be no mistake. Judge Lochren, in deciding this case in the Circuit Court uses apt words to express the facts and the rights of the parties in this case. We quote from his opinion, commencing at the second paragraph on page 335 of this record:

> "In the present case the official plat shows the bank of Cedar Island Lake, a large, permanent body of still water, as one of the boundaries of each of the fractional lots here in dispute. This is a natural, unchangeable monument and boundary to which courses, distances, and quantities must all give way. The purchasers of these fractional lots from the Government, and later their vendees, the complainants, going upon the ground with a copy of the official

map before purchasing, would not find section corners, nor any interior lines in the township; for the evidence shows that nothing of the kind was marked or designated on the ground. The only monument or boundary visible was the bank of Cedar Island Lake, and with that boundary fixed and plain they would form their judgments as to the location, character and value of the land, and as to the value of the timber thereon, which they were purchasing, as well as to the riparian rights belonging to any parcel of the land.

"The proposal of the land department now is to take summary possession of this very portion of the land which the patentees and their vendees the complainants were able to locate with certainty, from the only fixed and visible boundary, and with reference to the value and desirability of which, including the riparian rights, the purchases were made, and allow the same to be now entered by providing squatters. If the United States has still any valid claim to any portion of these lands the title to which they have conveyed away by patent, they should first establish such claim in a court of justice; and if they can recover any part of any of those lots it is quite certain that it will not be the part which they examined with the view of purchasing, and in fact did purchase and pay for."

The evidence shows, as is above stated, that the riparian rights upon this lake were considered by complainants as an important element of value in making their purchases. As stated by Mr. Justice Mitchell in Lamprey vs. State, 52 Minn. 181, 197:

"The incalculable mischiefs that would follow if the riparian owner is liable to be cut off from access to the water, and another owner sandwiched in between him and it, whenever the water line had been changed by accretions and relictions, are self-evident and have frequently been animadverted on by the courts. These considerations apply to riparian ownership on lakes as well as streams. * * * The owners of lands bordering on them have often bought with reference to access to the water, which usually constitutes an important element in the value and desirability of the land. If the rule contended for by the appellants is to prevail, it would simply open the door for prowling speculators to step in and acquire title from the state to any relictions produced in the course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to the water. The endless litigation over the location of the original water lines, and the grevious practical injustice to the owners of the original riparian estate that would follow would of themselves be a sufficient reason for refusing to adopt any such doctrine."

The Government having sold these fractional lots and conveyed the title thereto to the purchasers by patents which by reference to the plat conveyed the lands to the banks of Cedar Island Lake, the land department has no jurisdiction or authority to meddle with these lands by making the survey which that department has ordered, and which the defendants were about to make when this suit was begun.

No reason is presented why the Government in this case should not be bound by its plat, the same as would an individual under similar circumstances.

The good faith of th ecomplainants in making the purchase in reliance upon the Government plat, and the fact that the riparian rights which they expected to acquire by the purchase was one of the principal inducements to the purchase is fully established and not questioned.

This court has held as often as similar facts have been presented for its consideration, that this alone, purchasing in good faith in reliance on the plat constitutes a cimplete defense to a proceeding on the part of the Government to vacate the patent.

We again refer to the numerous cases decided by this court, and cited in this brief, where it has held that when the land department has made and approved of a survey of the Government lands, and the plat has been filed in the proper public office, and the land sold and disposed of, that courts have the power, and it is their duty to protect the private rights of the party who has purchased in good faita from the Government against the interference or appropriation of corrective re-surveys made by the department subsequent to such disposition or sale, and so far as we can learn, this has been the holding of this court without exception.

In conclusion, we respectfully pray that the decree in this case be affirmed.

M. H. STANFORD,
Solicitor and Counsel for Appellees.

BENTON HANCHETT,
Of Counsel for Appellees.

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Office Supreme Court
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Clerk.

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Supreme Court of the United States.

OCTOBER TERM, A. D., 1902.

No. 161.

P. H. KIRWAN, as United States Surveyor-General for the District of Minnesota, and
THOMAS H. CROSSWELL, *Appellants*,

vs.

SIDON J. MURPHY, GEORGE O. ROBINSON, ELISHA H. FLINN, AND TEMPLE E. DORR, *Appellees*.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

ADDITIONAL BRIEF ON BEHALF OF APPELLEES.

S. D. LUCKETT,
Of Counsel for Appellees.

1918

Supreme Court of the United States.

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No. 161.

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Additional Brief on Behalf of Appellees.

In view of the exhaustive and very able brief prepared and filed in this case by Mr. M. H. Stanford, senior counsel for appellees, it seems almost presumption for the writer to attempt to add anything to what has been so well and fully said. At the request of appellees and Mr. Stanford, however, we desire to discuss a few of the questions involved in the case at bar, especially such as are presented by the rulings of the Land Department in this and similar cases.

While this case was in the Interior Department, the writer was the attorney for Simon J. Murphy and his co-appellees, in resisting the petition for the survey involved in this case, and for this reason, chiefly, to him has been delegated the task of discussing Departmental decisions.

I.

The Injunction Granted in this Case by the Circuit Court Runs Against the Purely Ministerial Act of Making a Survey, and the Record Presents the Question of the Jurisdiction of the Secretary of the Interior to Order Such Survey.

The position of the appellees, of course, is that the lands sought to be surveyed are patented lands, and that under the rulings set forth in the principal brief herein, the Land Department of the United States has no jurisdiction over them. To this proposition, it will be answered that we are begging the very question in issue, that question being whether or not the lands were in fact patented. It will be contended by counsel for appellants that the Secretary of the Interior is clothed with certain *quasi* judicial functions, and that he must ascertain for himself whether or not he has jurisdiction over a case that is presented to him, calling for his action, in the same way as any court must do, and such cases will doubtless be cited as Catholic Bishop of Nesqually *vs.* Gibbon, 158 U. S., 155, and Michigan Land and Lumber Co. *vs.* Rust, 168 U. S., 589, in support of the jurisdiction of the Secretary. It will further be contended, probably, that inasmuch as the Secretary has determined that he had jurisdiction to order the survey, his conclusion is final, and cannot be called in question in such a proceeding as this.

We cheerfully concede, to the fullest extent, the power and the duty of the Secretary to look into the law, so far as

it applies to the case at bar, and ascertain, in the first instance, for himself, whether or not the Land Department had jurisdiction over the subject-matter involved. We deny most emphatically, however, that if he erroneously concluded that he had jurisdiction over certain lands which once were public lands, but which, under the conceded facts of the case, the law would declare to be patented lands, his conclusion that they are not patented is binding upon the courts, but, on the contrary, we insist that it is one of the most sacred duties of the courts to protect private individuals—these appellees, for instance—from injuries which would result to them in their property rights, because of an attempt, however honest and conscientious, by the Secretary, to direct acts assertive of public ownership over lands which are really their private property.

It was contended in the Circuit Court, and in the Circuit Court of Appeals, by counsel for appellants, defendants below, that inasmuch as the action of the Secretary of the Interior in ordering this survey involved the exercise by him of discretion and judgment, and required him to find facts and construe the law, his conclusions are binding upon the Courts, and his order furnishes sufficient justification for the action of the Surveyor-General and his deputy in proceeding to execute that order.

The mere fact that an executive officer must to some extent construe the law, and exercise judgment before proceeding to do a ministerial act, does not prevent parties who may be injured by his proposed action from resorting to a court of equity to have such action enjoined, if in fact it is without warrant of law. This is not a case in which the courts are asked to re-examine the facts as found by the Secretary, and determine whether or not his finding of facts was correct on the evidence. The question is, did the Secretary, on the facts found by himself, or established on

the undisputed evidence in the record now before the Court, have jurisdiction to cause the survey of the lands here in question as public lands? His conclusion on this question was necessarily a conclusion of law, and if he erroneously concluded he had jurisdiction, and directed the Surveyor-General to proceed accordingly, the latter official cannot set up the erroneous conclusion of his superior as his justification. This branch of the case is covered very fully in the principal brief for appellees, beginning on pages 124 and 136, where a very full collection of cases bearing on the question will be found. I would also cite the case of Roberts *vs.* U. S. *ex rel.* Valentine, 176 U. S., 221. That was a case of mandamus against the Treasurer of the United States, and it was contended that the act of the Treasurer there complained of was one involving the exercise of judgment to such an extent as to preclude any interference by the courts. In the opinion of this Court, delivered by Mr. Justice Peckham, it was said:

> "Unless the writ of mandamus is to become practically valueless and is to be refused even where a public officer is commanded to do a particular act by virtue of a particular statute, this writ should be granted. Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so, the

value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the court he might successfully plead that the performance of the duty involved the construction of the statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the powers of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required."

The case of American School of Magnetic Healing *vs.* McAnnulty, decided by this Court at the present term (November 17, 1902), opinion also by Mr. Justice Peckham, is likewise directly in point on this part of the case. In that case, the question of the power of the Postmaster-General to exclude the advertising matter of the appellant from the mails was involved, the suit being one to enjoin a local postmaster in Missouri from carrying out the orders of the Postmaster-General, precisely the question, so far as jurisdiction of the courts is concerned, presented in the case at the bar. In the course of the opinion, the case of Burfenning *vs.* Railroad Co., 163 U. S., 321, is quoted from, and the opinion then proceeds as follows:

"Here it is contended that the Postmaster-General has, in a case not covered by the acts of Congress, excluded from the mails letters addressed to the complainants. His right to exclude letters, or to refuse to permit their delivery to persons addressed, must depend upon some law of Congress, and if no such law exists, then he cannot exclude or refuse to deliver them. Conceding, *arguendo*, that when a question of fact

arises, which, if found in one way, would show a violation of the statues in question in some particular, the decision of the Postmaster-General that such violation had occurred, based upon some evidence to that effect, would be conclusive and final, and not the subject of review by any court, yet to that assumption must be added the statement that, if the evidence before the Postmaster-General, in any view of the facts, failed to show a violation of any Federal law, the determination of that official that such violation existed would not be the determination of a question of fact, but a pure mistake of law on his part, becauce the facts, being conceded, whether they amounted to a violation of the statutes would be a legal question, and not a question of fact. Being a question of law simply, and the case stated in the bill being outside of the statutes, the result is that the Postmaster-General has ordered the retention of the letters directed to complainants in a case not authorized by those statutes. To authorize the interference of the Postmaster-General, the facts stated must, in some aspect, be sufficient to permit him, under the statutes, to make the order."

So, we say, in the case at bar, that the *facts* must be such in some aspect as to permit the Secretary of the Interior to cause this proposed survey to be made. Otherwise, the order was without authority of law, and therefore void.

II.

The Facts in the Case Do Not Justify the Order for Survey.

The facts preceding the application for injunction by appellees are fully stated at the beginning of Mr. Stanford's brief. Application was made in the first instance to the Surveyor-General of Minnesota, by certain private individuals, for the survey of certain alleged public land lying around Cedar Island Lake. This application was submitted by the Surveyor-General to the Commissioner of the General

Land Office, for his action. He declined to order the survey, on the strength of such rulings of this Court as are contained in Hardin *vs.* Jordan, 140 U. S., 371; Mitchell *vs.* Smale, 140 U. S., 46, and other cases. On appeal to the Department, Secretary Smith overruled the Commissioner and ordered a hearing to ascertain the facts alleged in the petition for the survey. His opinion and decision will be found in the case of G. A. Burns *et al.*, 20 L. D., 28. In that decision (p. 31) the Secretary held that the rulings of the Supreme Court referred to were not applicable, "in that there is no question of riparian ownership here, there has been no recession of the waters of the lake; hence no accretions beyond the meander line". It will be seen on reading the entire paragraph of the Secretary's opinion, from which the above quotation is made, that in the view of the writer of that opinion, the only riparian right that could be considered is the right of accretion or reliction, and as no such right is asserted by appellees, he concluded that the question of riparian ownership was not involved. In so ruling the Secretary erred very materially as to the law of riparian rights. Reliction and accretion are mere incidents of such rights. The principal and most valuable feature of a riparian right is that of access to the water, and the law gives title to accretions and relictions to the owner of a riparian right, for the express purpose of protecting him in this right of access.

The writer of this brief prepared and filed a motion for review of the Secretary's decision in the case cited, insisting that an error had been committed as to the nature of riparian rights. This motion was overruled by the Secretary, with the express statement that all questions involved could be presented and decided after the hearing had been had to ascertain the truth of the allegations of the petition. After the hearing was had, the case again came before the Secre-

tary, and the writer again presented the question of the riparian rights of these appellees. This resulted in the decision of Secretary Francis, of October 29, 1896 (Record, p. 51). Notwithstanding the fact that in the ruling on the motion for review, it was stated that the questions presented in support of said motion could be presented at the hearing, and "then fully considered in the light of all the facts", (Record, p. 54), it was held in said final decision that the question of riparian proprietorship was *res adjudicata*.

In that decision of the Secretary, on which the order for survey sought to be enjoined was based, will be found the following finding of fact (Record, p. 53).

> "The plat made in pursuance of the survey made by Deputy Howe in 1876 was accepted and approved by the Government as the official plat of this township. All of the land of this township between December, 1879, and March, 1887, has been patented. Prior to the issuance of such patents, to wit, in 1879, complaints were made to your office as to the correctness of the survey as made, and on June 11, 1879, despite such complaints, an investigation was denied and the plat approved."

That all the land in said township, including the land in question here, has been patented, is precisely what we have contended all the time and for this reason we have always said, and do now, that the Land Department has no jurisdiction over it; but it is said that the survey made by the agent of the Government, and accepted by the Government, was fraudulent, and that none of the meander corners described in the field-notes of the survey were found in place on the meander line of Cedar Island Lake two years after the date of the survey. It is contended that the meander line was simply imaginary, and that there was land that ought to have been surveyed between said line and the waters

of said lake. It is admitted, however, that the lake existed at the date of the Howe survey, in practically its present condition, and that whatever is said in reference to the character of the meander line is equally true of every section line on the interior of the township. The Government cannot say that the comparatively small area between the meander line and the water of the lake is unsurveyed, without saying at the same time, and based on the same facts, that not a single acre of the land in the township is surveyed. But to say this would be to say that the finding of the Secretary above quoted, to the effect that all the lands in the township have been patented, is untrue in law, for the reason that unsurveyed lands of the United States cannot be disposed of under the agricultural land laws.

The township is either *all* surveyed, and *all* patented, or none of it is surveyed or patented. As is fully shown in the principal brief for appellees, the patents of the United States refer to and adopt the plats of survey, and they become part of the patent as fully as though actually incorporated therein. These plats are drawn from the field-notes of the actual survey made by the Deputy Surveyor in the field, and for this reason a certified copy of the field-notes of Howe's survey of this township was properly admitted in evidence, and is found in the record, beginning on page 203.

Constituting part of the official field-notes of the survey of the township in which these lands lie will be found the "Meanders of Cedar Island Lake", beginning on page 237 of the Record. These field-notes represent the supposed water line of the lake, and represent it as lying in Sections 3, 4, 9, 10, 11, and 2, in that township. It seems to be practical'y admitted in the case that the initial and closing points of this meander line are located correctly in place on the township line between Townships 57 and 58, North. In the answer of the defendants, appellants herein (Par. 5,

P. 38, Record), reference is made to a diagram attached to said answer, marked "Exhibit B", which diagram will be found in the Record before page 73. While, as Mr. Stanford shows, this diagram is not accurate, still it shows that even according to the allegations of appellants herein, in their pleadings, a portion of said lake lies in each section mentioned in said field-notes of the meander line. The same thing is shown by "Exhibit D", printed as the second document in the Record, representing the survey made of this township by the county surveyor. It follows, therefore, that as a matter of fact, every section line which lies between any two of the fractional lots owned by appellees, if continued in the direction indicated by the field-notes, representing the survey of said section lines, would strike the actual waters of this lake, and these section lines are so represented by the official field-notes in question. Take, for instance, the line between Sections 9 and 10, the field-notes of which appear on page 225 of the Record. These field-notes are as follows:

"(Chain)

North between Sections 9 & 10.

Var. 9 degrees 35 minutes E.

15.00 Leave swamp brs. E. & W.

40.00 Set a post for ¼ Sec. Cor. from which
Cedar 10 N. 80 W. 50 lks.
Tam. 12 N. 35 E. 42 lks.

46.40 Set a post on south shore of Cedar Island Lake for corner to fractional sections 9 & 10 from which
Cedar 5 S. 50 E. 26 lks.
Birch 8 S. 42 W. 15 lks.
The point for corner to sections 3, 4, 9 & 10 falls in the Lake and cannot be set."

This line separates Lot 4 in Sec. 10 from Lot 3 in Sec. 11, on the official plat. As already stated, if protracted, it

would, as a matter fact, reach the water. The same thing can be shown with reference to the lines between Sections 2 and 11, 9 and 10, 4 and 9, 3 and 4. The case, therefore, comes clearly within the familiar rule, fully discussed in Mr. Stanford's brief, to the effect that where the calls in a boundary of lands described in a deed refer to a fixed and permanent natural object as the beginning or ending point of a line, courses and distances must give way, and the boundary be extended to the permanent object, by the most direct line.

III.

The Position Taken by the Land Department in this Case is Contrary to the Rulings Made Both Prior and Subsequent to the Order for the Survey Herein.

As has already been said, Secretary Francis was certainly in error in ruling that no question of riparian proprietorship was involved in this case, simply because he found that the parties claiming under the patents of the United States were not asserting that the lands said to lie between the meander line and the shore of the lake had been formed since the official survey, either by accretion or reliction. It is uniformly held by the land officials, where a question of surveying an island or a strip of land alleged to be public land, between a body of water and lands that have been disposed of, is presented, that the owners of adjacent lands are parties in interest, and are entitled to be heard expressly on the ground that they may be in a position to assert claims as riparian owners. Such cases have frequently arisen, it is true, in regard to the survey of beds of lakes or rivers that have been uncovered by recession of the waters, as, for instance, by the change in the channel of a river, or the drying up of the waters of a shallow lake, but the rule is based upon the correct principle that the

owner of the shore is entitled to riparian rights, which include access to the water.

We will ask the Court to examine the following reported decisions of the Department:

James H. May, 3 L. D., 200;
Reuben Richardson, 3 L. D., 201, (Note);
John W. Moore, 13 L. D., 64;
Gleason *vs.* Pent, 14 L. D., 375;
Lewis W. Pierce, 18 L. D., 328;
Watson H. Brown, 20 L. D., 315;
State of California *vs.* United States, 24 L. D., 68;
Same case on review, 25 L. D., 199;
Lake Malheur, 16 L. D., 256;
Same case, 19 L. D., 439;
French-Glenn Live Stock Co. *vs.* Marshall, 28 L. D., 444;
Pacific Live Stock Co. *vs.* Armack, 30 L. D., 521;
Harvey M. La Follette *et al.*, 26 L. D., 453;
John J. Serry *et al.*, 27 L. D., 330;
Archie G. Palmer, 27 L. D., 380;
John McLennen *et al.*, 29 L. D., 415;
Same case, 30 L. D., 527:
James Popple *et al.*, 12 L. D., 438;
John P. Hoel, 13 L. D., 588;
Instructions, 14 L. D., 119;
F. M. Pugh *et al.*, 14 L. D., 274;
L. F. Scott, 14 L. D., 433;
Pruszynski *vs.* R. R. Co., 14 L. D., 637.

It will not be necessary to discuss the above rulings in detail, and only a few of them, in groups, need be quoted from. Several of them differ in their facts from the case at bar, relating as they do to the beds of shallow lakes or ponds, from which the water has dried up or disappeared, and in a few instances to islands in streams, which had formed subsequent to the official survey of the adjacent shores. But all through the long line of Departmental decisions, it will be found that the Department has uniformly recognized the

fact that where the plat of the Government survey shows a stream, lake or other body of water, defined by meander lines, it is held that the parties to whom the Government title to the adjacent lots has been conveyed are presumably owners of riparian estates. Take for instance, the two cases of Gleason *vs.* Pent, 14 L. D., 375, and Lewis W. Pierce, 18 L. D., 328, *supra*. These cases involved the same section of land in the State of Florida bounded on the east by Biscayne Bay, a navigable arm of the Atlantic Ocean. The first survey of the township was made in 1845, in which the fractional section involved was shown as containing 164.84 acres, and was designated as Lots 1 and 2. These lots were both disposed of to Gleason by that survey. In 1875, an amendatory survey was made, by which the water line bounding the fractional section there in question was shown as being far to the east of its position on the plat of 1845, with a much greater area in the section. Diagrams of the respective surveys of this section will be found on page 329 of the case in 28 L. D. W. H. Gleason had entered the entire fractional section, embracing lots one and two, as a homestead, prior to the survey of 1875. By the latter survey, Pent applied to enter the lands shown as lying east of Gleason's homestead claim, and the case went by successive appeals to the Secretary. In the case in 14 L. D., it was assumed that the land between the old line of 1845 and the new line of 1875 was an accretion. In his decision in that case, the First Assistant Secretary said :

> "The public surveys are the official description by which the public lands are disposed of by the Government. When, therefore, the patentee made his original entry, the then official survey of 1845 was, as claimed by counsel, an 'assurance of the proprietor that a riparian estate was for sale.'
>
> "Such entry was a segregation and a disposal of the land in accordance with that survey, and rights there-

by acquired could not be impaired by the subsequent survey of 1875.

"The patent under which the appellant claims being based upon such original entry took effect as of its date, and conveyed the riparian estate described by the first survey.

"That riparian owners are entitled to such accretion as that now under consideration is too well settled for serious discussion."

I call special attention to the concession made by the Secretary, to the effect that the plat of the survey of 1845 was "an assurance by the proprietor (The United States) that a riparian estate was for sale." This is undoubtedly a correct view of the effect of filing such a plat in the United States land office, and offering the lands shown thereby for sale. So in the case at bar, when the plat of the township in Minnesota, here involved, was approved and officially filed in the local land office at Duluth, the proprietor of the lands, The United States, assured the public that a riparian estate was for sale, and with that assurance still standing, it disposed of all these lands, and the appellees herein, believing in good faith that this assurance was true, and in fact knowing that it was true, from having the shores of the actual lake examined by their agents, they purchased the lands in controversy, around said lake, very largely for the purpose of securing this identical riparian estate.

But in the later case of Lewis W. Pierce, *supra*, it was shown to the Department that, as a matter of fact, the land indicated in the second survey of 1875 was not an accretion to the lot shown by the plat of 1845, but was in fact high and dry land, on which large timber was growing at the date of that survey. Lot 1 therein contained about eighty acres by the survey of 1845. The survey of 1875 shows about 100 acres of additional land between the old meander

line and the ocean and it was shown, as stated, that this land was in existence in 1845. Here is a much larger relative excess than appears in the case at bar, notwithstanding which Secretary Smith, who afterwards ordered a hearing as preliminary to the survey in question in the present case, said :

> "In the appeal under consideration, however, it is claimed that the land in question cannot be an accretion as timber is growing thereon more than 100 years old ; that there must have been a mistake in the original survey and to ascertain the facts a hearing is desired.
>
> "To admit that there was a mistake in the survey could not, to my mind, alter the case for it is not claimed that, even if a mistake had been made, Gleason was in anywise responsible for it or that it was made through his connivance.
>
> "He made entry fifteen years after the survey of 1845, and his contract with the Government was based upon the recognized plat then on file. This assured him a water front, and undoubtedly this fact influenced his selection of the land. This being so, no subsequent survey can deprive him of his frontage on the water."

Again, the Secretary recognizes the fact that, as the owner of the land under the survey of 1845, the United States represented to Gleason that the land it was offering for sale had a water front, and that, having sold the land to him under this representation, it could not afterwards, by its agents, deprive him of that water front on the claim of a mistake in the survey by which the land was sold to him. The similarity of the cases cited to the one at bar is very striking.

Again, take the group of the last six cases above cited, beginning with the case of James Popple *et al.*, 12 L. D., 433, *supra*. The Popple decision was a departure from the previous position of the Department as to the ownership by

the United States of the beds of meandered non-navigable lakes. In that case, Crab Lake, in the State of Washington, had been largely drained, and the bottom reclaimed and brought under cultivation, at a large expenditure of money and time, by parties who asked to have the lands so uncovered surveyed and disposed of. Their petition was granted on the theory that the bed of the lake remained the property of the United States. This decision was made just twelve days before the decision of this Court in Hardin *vs.* Jordan, 140 U. S., 371, and on the strength of the latter case, was overruled in the case of John P. Hoel, 13 L. D., 588, *supra*. In his instructions of January 12, 1892 (14 L. D., 119), Secretary Noble refers to the decisions above mentioned relating to the applications for the survey of lands within meandered lakes, and rivers, and said: "The practice of denying such applications, in force before the Popple case was decided, will, in general, be continued."

When the case of F. M. Pugh *et al.* (14 L. D., 274), *supra*, came before Secretary Noble, he found that all the fractional lots surrounding the lake there in question, which was shown on the plat to be three or four miles long and from one-half to one mile in width, had been disposed of by the Land Department. It was further shown that inside of the meander lines of said alleged lake were tracts of land of considerable extent, on which hay was cut, and which were easily reclaimed for agricultural purposes by drainage. Understanding this, the Secretary refused to order the survey and said, (Op., p. 276):

> "It is manifest by the showing made by the several applicants that much of the land within the meander line of the lake is valuable for agricultural purposes; also that considerable labor and money have been expended looking to the reclaimation of the land—surveyed and reported by the Government officers as

"lake". But, inasmuch as the lots immediately contiguous to and surrounding the meander line of the lake have been either patented or applied for by the various claimants, riparian rights have intervened."

In the last case above cited, that of Martin Pruszynski, the present writer represented the petitioner, Pruszynski. It is shown by the statement of facts in the decision of the Secretary that, abutting upon the fractional lots in section 15, there involved, was a tract of 129.75 acres, of dry land, within the meander lines of what is represented on the plat as a lake. The evidence taken at the hearing ordered in that case showed without contradiction that the so-called lake never did extend into section 15, but that the entire section was solid land at the time of the survey. Section 15, however, had been granted to the R.R. Co., and the adjoining section 16 to the State of Minnesota, as school land. Upon such a case, Secretary Noble refused to order the survey, and said (Op., p. 640):

> "The present tract lies within the State of Minnesota, and there can be no doubt but that the common law doctrine as to the rights of the owners of land on non-navigable lakes and ponds prevails in said State. The proprietors of the land on the rim of this lake own that within the meandered line of the lake, according to their several interests."

The decisions and instructions relating to Lake Malheur, in Oregon, are also significant as to the position of the Department in such cases as the one at bar. That lake was represented on the plats of the Government survey as being over twenty miles long, and about five miles broad, extending entirely across three townships, and into the fourth. In 1892, certain petitions were transmitted to the Secretary of the Interior, representing that said lake was very shallow around its borders, that by cutting a ditch across a low ridge

between said lake and Lake Harney the original surface of Lake Malheur had been lowered several feet, leaving bare large quantities of land which could be surveyed and disposed of by the Government. In his ruling of March 3, 1893 (16 L. D., 256), Secretary Noble held that as to such lands as were opposite fractional tracts still retained by the Government, or opposite portions of some of the townships that were unsurveyed, they were subject to survey and disposal, but that as to such lands as were opposite tracts that had been disposed of, either by the swamp-land grant to the State, or by entry, the Department had no jurisdiction, and could not survey them. The other cases in the list of cases cited at the beginning of this subdivision, relating to Lake Malheur, are as follows: Lake Malheur, 19 L. D., 439; French-Glenn Live Stock Co. *vs.* Marshall, 28 L. D., 444; and Pacific Live Stock Co. *vs.* Armack, 30 L. D., 521. From a reading of all these various cases it will be found that the surveys of the townships bordering on said lake present various aspects of the right to survey lands inside of a meander line represented on the plat as running along the shore of a lake. Some of the lands bordering on the lake were not surveyed at all when these questions arose, and there was no meander line opposite them. The field-notes in some of the townships described the section lines as running to Lake Malheur, and purported to fix meander corners on the shore of the lake. In other townships, the meander corners and lines were described as being fixed with relation to "Malheur Lake Marsh". The original instructions, given in 1893, to survey only the lands opposite those still owned by the Government, were modified by the instructions set forth in 19 L. D., and the Suveyor-Gereral was directed to survey all the lands within the old meander line, up to the actual shores of the lake as they then existed, reserving to private owners of fractional lots along the old

survey the right to have their interests as riparian proprietors properly protected after the survey should be made. The land involved in the case of French-Glenn Live Stock Co. *vs.* Marshall is contiguous to that in the case of French-Glenn Live Stock Co. *vs.* Springer, 185 U. S., 47, which is discussed in the brief of Mr. Stanford. In the case before the Secretary, the lands which it was sought to have surveyed were treated as reliction, and it was held that by the swamp-land grant the State became a riparian owner, and was entitled to relictions and accretions. No question was raised in the pleadings in that case as to whether in fact the waters of the lake did extend opposite the fractional sections, containing the lots which had been patented to the State, but in the oral argument, one of the attorneys stated to the Secretary that in a certain case, pending in the courts, numbers of witnesses had sworn that the lake did not extend opposite the surveyed lands there involved, at the time of the survey at all, and that the lines of the fractions, if extended north and south, would go entirely across dry land, and never strike the lake ; but as this question of fact was not presented for his official action, the Secretary made no ruling in regard to it. It is, of course, governed by the case decided in this Court, *supra*. In the case of Pacific Live Stock Company *vs.* Armack, *supra*, the Secretary held that the meander line did not purport to represent the sinuosities of the shore of the lake, and quoted from the field-notes of the survey of the township there involved, to show that the surveyor closed his survey on the marsh lands lying along the border of the lake, and that he reported that by surveying these marsh lands, the township could, in his judgment, be made entire, and would not be fractional at all. On these facts, the Secretary properly applied the ruling of this Court in the case of Niles *vs.* Cedar Point Club, 175 U. S., 300.

Further discussion of the Department decisions cited in the

table of cases first set forth does not seem to be necessary, but they all illustrate some point arising in the case at bar, and show that with the exception of this one present case, and the overruled Popple case, the Secretary has recognized the same principles as are firmly fixed by the decisions of this Court. The general rule deducible from his decisions may be thus stated. Where the plat of the survey of a township of public land gives the assurance of a riparian estate, by reason of the fixing of a meander line, representing the rim of a lake or the shore of the ocean as abutting upon the fractional sections, and, in fact, there is such a body of water opposite such sections, the Land Department has no jurisdiction to attempt to amend the survey of such township, after having disposed of such fractional lots, by its own plat, for the reason that the water line is the boundary of such fractional sections; but where, in fact, no such body of water exists, within the limits of the sections or townships represented by the plat, there can be no riparian rights conveyed by the patent of the United States, and the courses and distances of the lines run about the fractional tracts must be taken as their boundaries.

When the present case came before him, the then Secretary of the Interior erred in not applying the first part of the above rule to the case, for, as already shown, it was conceded that Cedar Island Lake was an existing body of water at the time of the Howe survey, lying mostly inside of the meander lines represented by his field-notes, and purporting to be one of the boundaries of each of fractional sections 2, 3, 4, 9, 10, and 11, and that as a matter of fact, said lake does occupy portions of all of said six sections. It comes, therefore, clearly within the rule laid down in the last paragraph of the opinion of this Court, as formulated by Mr. Justice Shiras, in French-Glenn Live Stock Co. *vs.*

Springer, *supra*, as already pointed out in Mr. Stanford's brief.

Without discussing it, I ask that the very able opinion of the Assistant Attorney-General for the Interior Department, adopted by the Secretary as his decision, in the case of LaFolette *et al.*, 26 L. D., 453, be carefully read, especially portions of the opinion found on pages 464 and 466.

The last decision of importance made by the present Secretary of the Interior on a case similar to the one at bar was in the case of T. A. O. Stensland *et al.*, decided November 21, 1902, and not reported. A correct copy of that decision is attached to this brief as an appendix. The initials of the several Assistant Attorneys, and of the Assistant Attorney-General for the Department are attached to the decision as they appear on the original, showing the care with which said case was considered before the decision was rendered. It cannot be doubted that the opinion was prepared with some caution, in view of the fact that this present case was pending before this Court for argument, and no discussion of the general principles of law governing the right or power of the Secretary to make such a survey is found in the opinion. The facts found in the decision, and the conclusion reached, however, are very significant, and are in harmony with the decisions of the Circuit Court and the Circuit Court of Appeals in the case at bar. In the Stensland case, the question was presented of the power of the Department to survey an alleged strip of unsurveyed land lying between the meander line on the Government plat, representing the line of Baker's Bay in Washington, and the true water line of said Bay, opposite that township. This strip was shown to be about 900 rods long, and of an average width of 70 rods, making an area of 393.75 acres. It was shown that over 700 people were living on this strip, and it was alleged

that said land had been omitted from the official survey, and therefore was not either accretion or reliction. The Secretary further found that as to the fractional lots abutting on this meander line, those in three of the sections were included in two donation claims which had been patented, and that the State of Washington was laying claim to the lands outside of the meander line, as tide lands. It may be remarked that if the question whether or not a lake exists opposite fractional lots is a question of fact which may be inquired into, even after patent issues, it is likewise a question of fact as to whether a certain strip of land was subject to be covered by water at high tide, and may be inquired into by the Secretary, in a proper case, as well as by the courts. The Secretary, however, in the case cited, refused to order the survey, and said:

> "Although the physical condition of the alleged strip of land between the meander line and the actual water line of the bay might indicate that the meander line did not strictly and accurately follow the sinuosities of the bay, the most that can be said is that it was a careless and incorrect survey, but was not sufficient evidence to show that there was any collusion between the surveyor and others, to defraud the Government, and even if the authority now rests with the Government, to investigate and correct said survey, it does not appear that any good purpose can be subserved by interfering with it at this late day, and thereby disturbing rights and titles that have grown up under it during the long period which it stood unchallenged."

So, we say, in the case at bar, that after the Commissioner of the General Land Office had refused to investigate charges of irregularity, if not fraud, in the survey of the township here involved, with special reference to the northeast part of the township, in 1879, and had in the next seven or eight

years, disposed of all the lands in the township, and issued the patents of the United States therefor, according to the plat which he had accepted and approved, and after the patentees had sold the lands to other parties, in good faith, for valuable considerations, the present appellees among the number having relied expressly on the assurance made by the Government plat, that they were acquiring a riparian estate, it does not appear that the Department should now interfere to disturb rights and titles that have grown up under the representations of the Government. As shown in the brief of Mr. Stanford, the settlers and purchasers of lands in this township, finding no Government corners by which they could properly identify the lands patented to them, proceeded according to the statutory method provided by the laws of Minnesota, to have the county surveyor locate their lines and corners officially. This was done, as is shown by the evidence, and all the owners of the lands, including these appellees, accepted the survey of the county surveyor as establishing their lines for them, carrying the same up to the waters of Cedar Island Lake, and excluding five other lakes in the township from private ownership, after they had been sold by the Government as land.

The instructions issued by the Commissioner of the General Land Office, under the direction of the Secretary, for the guidance of the surveyor, who should take the contract to make the proposed survey, are set out in the record, beginning on page 55, as an exhibit to the answer of the defendants, appellants herein. On page 56, paragraph 2, the contractor, Mr. Crosswell, is instructed that the execution of the survey specified in his contract would require the temporary establishment of the corners common to sections 1, 2, 11, 12—sections 11, 12, 13 and 14—sections 10, 11, 14 and 15—sections 9, 10, 15 and 16—sections 8, 9, 16 and 17 and sections 4, 5, 8 and 9. In the last paragraph, page 57, Record,

he is further directed to find or re-establish on the eastern boundary of the township, the corner of sections 7, 12, 13 and 18, and "then run out the lines between sections 12 and 13, 11 and 14, 10 and 15, etc., according to the bearings and distances given in the original field-notes, and determine the most probable positions for the section corners" referred to in paragraph 2, *supra*. And yet it is conceded that all the lands on which Mr. Crosswell is directed to establish these lines and corners are patented lands in the possession of private owners. The Secretary of the Interior, therefore, has no more authority to direct his Surveyor-General, by his deputies, to go upon these private lands in Minnesota, for the purpose indicated, than he would have to send a subordinate officer out into Maryland or Virginia, to run lines and fix corners on private lands, with the view of establishing some supposed claim of the Government to other lands. It is conceded on all hands that the corners referred to in the above orders are not in place, and were never, in fact, properly set by Howe, when he made the survey, in 1876. The owners of the lands in the township have had corners fixed by the county surveyor. Under the instructions above set forth, as given to Mr. Crosswell, he cannot fix the corners and lines in accordance with the county surveyor's survey, and the result would inevitably be to raise disputes, and possibly litigation, among the owners of the lands on which Mr. Crosswell would fix his corners and lines. And yet, it is clearly impossible for him to locate the old meander line, without following some such course as is outlined for his guidance in said instructions. Certainly, the Secretary has no jurisdiction to order the re-survey of the section lines described in these instructions, after the lands have been patented and passed into the possession of private owners. These very instructions are an implied admission to the effect that the contemplated

survey cannot be made without going upon the lands over which the Land Department has no jurisdiction.

All the other questions in the case seem to be so fully covered by Mr. Standford's brief, that I will not pursue the discussion further.

Respectfully submitted,

S. D. LUCKETT.
Of Counsel for Appellees.

APPENDIX.

30-143. E. F. B. S. V. P.
W. V. D. W. C. P.

DEPARTMENT OF THE INTERIOR.

WASHINGTON.

November 21, 1902.

THE COMMISSIONER OF THE GENERAL LAND OFFICE:

SIR: With the letter of your office of November 7, 1902, is transmitted the appeal of T. A. O. Stensland and others, from the decision of your office of May 14, 1902, rejecting their application for the survey of an alleged tract of unsurveyed land, lying outside of the meander line of Baker's Bay, in fractional sections 6, 7, 8, and 17, in T. 9, N., R. 10 W., Willamette Meridian, Washington.

The petitioners allege that the Government's survey of said township was made in 1858, and that by said survey, the meander line of Baker's Bay, along said fractional sections, was so run as to exclude a valuable strip of land, about 900 rods long, and of an average width of about 70 rods, which strip lies between the Government meander line so surveyed, and Baker's Bay; that said strip is now, and has been for fourteen years last past, settled upon, and is now occupied by more than 700 persons, who have placed valuable improvements thereon, believing that upon a proper survey, the tract would be shown to be public land; that on October 29, 1897, the State of Washington, claiming said land as tide land, executed a deed of conveyance of the same to one Matilda J. Gile, who pretends to hold title to the same, except as to some small portions that have been sold to some of the petitioners herein, who have paid a consideration therefor, and have accepted her deeds to avoid litigation.

The petitioners do not claim any right in themselves to

said land, but contend that "either a grave mistake was made by the surveyor who in 1858 ran the pretended meander line referred to in the petition, or else the same was tainted largely with fraud upon the Government".

You state that the donation claims of George Dawson and William McGunigal, embracing 312.06 and 314 acres, respectively, and situate in said sections 6, 7 and 8, were surveyed in 1863, and that the western boundaries of said claims were co-incident with, and closed on the meanders of Baker's Bay, as made by the survey of 1858. It thus appears that the public lands bounded by the meander line as delineated by said survey, were disposed of forty years ago, and that the State of Washington has asserted title to the lands excluded by the survey, as tide lands, and has parted with her claim, to third parties.

The evidence submitted in support of the petition is the statement contained in the affidavits of several persons, that spruce and alder trees are standing and growing upon the said lands, ranging in size from one foot to three feet in diameter, and that trees recently cut therefrom show by their grain, an age of eighty years. In this connection, the petitioners, in their appeal, call attention to the fact that H. S. Gile, who surveyed the meander line in 1858, is the husband of Matilda J. Gile, who, after said survey, acquired the title to the donation claims above referred to, and now holds the title to same in her own name—which they insist is sufficient alone to establish grave suspicion of fraud and collusion on the part of Gile and his wife, and to warrant a full examination into the matter.

Admitting all the facts alleged by petitioners to be true, the conclusion is not warranted that the alleged erroneous meander was prompted by any fraudulent purpose or intent on the part of the surveyor, nor are said facts sufficient to warrant an investigation by the Government, into the

matter. Although the physical condition of the alleged strip of land between the meander line and the actual water line of the bay might indicate that the meander line did not strictly and accurately follow the sinuosities of the bay, the most that can be said is that it was a careless and incorrect survey, but was not sufficient evidence to show that there was any collusion between the surveyor and others, to defraud the Government, and even if the authority now rests with the Government, to investigate and correct said survey, it does not appear that any good purpose can be subserved by interfering with it at this late day, and thereby disturbing rights and titles that have grown up under it during the long period which it stood unchallenged.

The decision of your office is affirmed, and the papers are returned herewith.

Very respectfully,

(Signed) E. A. HITCHCOCK,
Secretary of the Interior.

Supreme Court of the United States.

No. 161—October Term, 1902.

P. H. Kirwan, as United States Surveyor General for the District of Minnesota, and Thomas H. Croswell, Appellants, vs. Simon J. Murphy, George O. Robinson, Elisha A. Flinn and Temple E. Dorr. } Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[April 6, 1903.]

Murphy and others filed their bill of complaint in the United States Circuit Court for the District of Minnesota against Kirwan, as United States surveyor general for that district, and Thomas H. Croswell, as deputy surveyor, to enjoin them from surveying, by direction of the Commissioner of the General Land office, certain lands claimed by the land department to be unsurveyed public lands of the United States.

Complainants alleged that they owned lots 1, 2 and 3 of section 2; lots 1 and 2 of section 3; lots 1 and 8 and parts of lots 6 and 7 of section 4; and certain described parts of sections 9, 10 and 11, in township 57 north, range 17 west, fourth principal meridian, Minnesota, deriving title thereto through mesne conveyances and patents from the government; that the land was surveyed by Henry S. Howe in June, 1876, and record of the survey and field notes were approved by the surveyor general August 7, 1876, and a plat therefrom was by him duly made and submitted to the Commissioner of the General Land Office; that complaint was filed against the accuracy and good faith of the survey, which the Commissioner dismissed, and June 11, 1879, approved the survey and plat, which were duly filed and are the only survey and plat of the township ever made or adopted by tho government, and according to them the government sold and disposed of all the land in the township; that the survey, field notes and plat were incorrect, and did not accurately show the location and subdivisions of the land and water of the township, for that Cedar Island Lake is smaller than delineated, and several of the complainants' fractional lots are larger, and others are smaller, than shown on the plat; that complainants purchased said lands for value as extending to the lake upon an estimate of the timber thereon without knowledge of the inaccuracy or fraud of the survey; that the principal consideration inducing such purchase was that the land bordered on the lake and they owned other timber lands, the timber from which could be brought to market by floating through the lake and its outlet down the St. Louis River, then the only means of transport; that in 1892, five certain settlers, knowing complainants' rights and claims, petitioned for a survey of said lands, which the surveyor general recom-

mended to the Commissioner of the General Land Office should be allowed, but the petition was disallowed, whereupon on appeal to the Secretary of the Interior such proceedings were thereafter had that in October, 1895, the Commissioner of the General Land Office directed the United States surveyor general of the district of Minnesota to make a resurvey, which order was ratified and confirmed in November, 1896; that the contract for the resurvey of said land had been let by the surveyor general to Croswell and the survey was about to commence.

The bill averred that "by a new survey of said lands your orators will be put to great and vexatious litigation in making proof of their title in actions against parties who are wholly irresponsible; that a very large amount of the timber standing as aforesaid on the land of your orators and owned by them will be destroyed in the making of such proposed survey and the remainder thereof exposed to damage by fire by reason of said resurvey and your orators will be thereby irreparably injured."

The prayer was that the "surveyor general, his agents, attorneys, solicitors, and servants may be restrained by the order and injunction of this honorable court from entering into any contract for the survey of the lands herein described, or from surveying the same, or from taking any action for a survey of said lands or any part thereof, and that boundaries of said lands of your orators may be defined and set out in the decree and order of this honorable court and that all necessary direction may be given them for that purpose and to establish the boundaries of said lands, and that your orators may be protected in the use and enjoyment of such lands so owned by them as aforesaid extending to and including the shores of said Cedar Island Lake and to the center of said lake, and that said defendant and his successors in office may be perpetually enjoined from letting said contract for the survey of said land or any part thereof, and from surveying the same or any part thereof, and that your orators may have such other and further relief as to this court may seem meet."

Argument was had on the application for a temporary injunction and the matter taken under advisement, whereupon defendants filed their joint answer to the bill.

Defendants admitted the making of a contract of survey of the unsurveyed lands in these sections lying between Howe's purported meander line and Cedar Lake; that in 1876 a contract was made with Howe for the survey of the township, and that he returned the field notes of a pretended survey from which a plat was made and approved, but defendants averred that Howe surveyed only the exterior lines of the township, and in fact made no subdivision thereof, nor surveyed the lands within it; that his field notes were false, fraudulent and fictitious, and the plat made therefrom was false and incorrect; they admitted that the survey and plat were

approved by the Commissioner of the General Land Office after complaint to him of its inaccuracy, but not until after withdrawal of the charge of inaccuracy by the person making it. They admitted that an exhibit attached to the bill was a true copy of such approved plat; they denied that all of the lands were disposed of by the government, and alleged that about 1,200 acres in these sections were never disposed of and were still unsurveyed, lying between Cedar Lake and the lots described, all of which unsurveyed land is the land referred to, and is by the plat made from Howe's field notes indicated as part of Cedar Island Lake; they allege that no lots conveyed to the complainants were smaller than shown on the plats; that the true relative size of the lake to that shown in the plat was that shown on an exhibit attached, and that the land between the lake and the boundary line of the fractional lots was 1,200 acres of unsurveyed government land as referred to; defendants denied the good faith of complainants and alleged complainants' full participation in the contest proceedings resulting in the decision and order for the survey of these lands, and that the Commissioner and the Secretary of the Interior had full jurisdiction to pass on the question and to make the decision and order. The answer denied that the timber on complainants' land would be destroyed or damaged in making such survey, and denied every averment of the bill except as in the answer averred or denied.

The Circuit Court granted the preliminary injunction, and its order was affirmed by the Circuit Court of Appeals for the Eighth Circuit. 83 Fed. Rep. 275. An appeal was taken to this court and dismissed. 170 U. S. 205.

The cause then went to final hearing, and the Circuit Court found the facts as follows:

"1. On or about April 26, 1876, a contract for the survey of all lands in township 57 north, of range 17 west, in Saint Louis County, Minnesota, was made by the government of the United States with one Henry S. Howe, as a deputy surveyor of the United States, and thereafter said Howe made and filed what purported to be field notes of a survey of said township, from which a purported official plat of said township was thereafter made and approved by the surveyor general of the United States for the District of Minnesota and by the Commissioner of the General Land Office, of which plat Exhibit A attached to the bill of complaint is a substantially correct copy.

"2. There is no evidence, nor any marks upon the ground, to indicate that any actual survey of said township 57 was ever made by said Howe, as required by his said contract, and by the rules and regulations of the General Land Office, or at all, beyond the running and due marking of the exterior boundary lines of said township, where the section, quarter, and other posts and markings established by him are and always have been clear, distinct, and readily found and traced. There is no evidence on the ground that section lines were ever run by him in or across said township, or section corner posts or quarter posts ever located or set by

him, except a corner post at the northwest corner of section thirty-six (36) and a quarter post in the western line of said section thirty-six (36), and there is no evidence that witness trees were ever blazed or marked by him.

"3. Cedar Island Lake is a navigable, deep, and permanent body of water, fed principally by springs, having an area of about nine hundred (900) acres, instead of about eighteen hundred (1,800) acres as described in the field notes of Howe and shown on said official plat of said township. Instead of the shores of said lake being low and swampy as stated in said field notes, the banks are generally high and sloping lands, suitable for agriculture, extending around the lake, and support a good growth of pine and other forest trees large enough for lumbering, such as will not grow in water. The condition was the same in 1876, and no material part of the land surrounding the lake is accretion. Southerly and westerly of said Cedar Island Lake are five other deep, navigable, and permanent lakes in the same township, none of which are shown by the field notes of Howe's survey or upon said government official plat of said township, and all of which have, since the making of said official plat, been sold and patented by the government as land according to said plat.

"4. There is no evidence upon the ground that any meander line of said Cedar Island Lake was ever surveyed by said Howe, or any meander posts placed by him about said lake, except one where the north line of said township encounters said lake. And the outlet of said lake is at a different place from that described in said field notes and shown upon said official plat. After the making of the said survey and plat and before its approval, complaints touching the accuracy thereof were made to the Commissioner of the General Land Office, but on the withdrawal of such complaints the said survey and plat were approved.

"5. The land lying between the actual water line of said Cedar Island Lake and the meander line of that lake, as delineated on said official plat of said township, comprises the land in controversy in this suit, and is the same land directed to be surveyed by the Commissioner of the General Land Office and referred to in the surveyor's contract, which is attached as Exhibit A to the answer in this suit, being therein described as 'the public lands situate in secs. 2, 3, 4, 9, 10, and 11, in township No. 57 N., R. 17 W., of the 4th principal meridian, lying between the "old meander boundary of Cedar Island Lake," as given by the original field notes of Henry S. Howe, U. S. deputy surveyor, approved by the surveyor general of Minnesota, Aug. 19, 1876, and the shore line of said Cedar Island Lake.'

"6. Prior to the commencement of this suit the United States has sold, and by its patents has conveyed to the purchaser, according to said official plat made from said Howe survey, all the land in said township 57, as the same appeared upon said plat; to which plat all of said patents expressly referred; it being then and still the only government plat of said township.

"7. The complainants are the grantees and owners by mesne conveyances from the patentees of the record title to the following-described fractional lots in said township, to wit: Lots one (1), two (2), three (3), in section two (2); lots one (1) and two (2), in section three (3); lots one (1) and eight (8), and portions of lots three (3), five (5), and six (6), in section

four (4); lots one (1), two (2), three (3), and four (4), in section nine (9); lots one (1), two (2), three (3), and four (4), in section ten (10); and lot three (3) in section eleven (11), being the same lands which are more particularly described in complainants' bill; and each of which fractional lots appear and are represented on said official plat as bounded by and upon said Cedar Island Lake.

"8. So far as appears none of the patentees of said lands had any notice or knowledge of any fraud or misconduct on the part of said Howe in or about the making of said survey and field notes, and all were purchasers in good faith of said lands.

"9. Complainants purchased said fractional lots of land of the patentees or their grantees for the pine timber thereon, and the convenience of landing the same in the said Cedar Island Lake, to be driven to the place of manufacture; and before such purchase, in the year 1883, caused said lands to be explored and examined by an experienced timber estimator, who in making such examination used, as is customary in such cases, a copy of said official plat of said township which did not have upon it any statement of the acreage or amount of land in any of the subdivisions; and who reported to the complainants his estimate of the amount of pine timber on said lands, and the general character of said land, and the riparian character thereof as bounded upon said Cedar Island Lake; but did not discover or report any fraud or error in the survey of said township, or any error or mistake in the said official plat. And the said complainants purchased, paid for and took conveyances of said lands in good faith, and without any notice or knowledge of any such fraud, error, or mistake.

"10. The other permanent lakes in said township, not shown upon such official plat, but appearing thereon as land, and since sold and patented by the government as land according to such official plat, include areas equal to the area of said Cedar Island Lake; and portions of such lakes were purchased by complainants as land with their other purchases in said township.

"11. The survey sought to be restrained in this suit was ordered by the Commissioner of the General Land Office, upon the direction of the Secretary of the Interior, in a proceeding instituted by certain settlers upon the land in controversy; of which proceedings the complainants had due notice, and in which they appeared."

And the Circuit Court decreed:

"That the complainants are the grantees and owners, by mesne conveyances from the patentees, of the title of record and, in fact, to the following-described fractional lots, situate in township fifty-seven (57) north-range seventeen (17) west, in the county of St. Louis, State of Minnesota, to wit:" [Here follows description of lots,] "being the same lands which are more particularly described in the complainants' bill of complaint herein; and that said above-described fractional lots extend to and are bounded by and upon the actual waters of Cedar Island Lake.

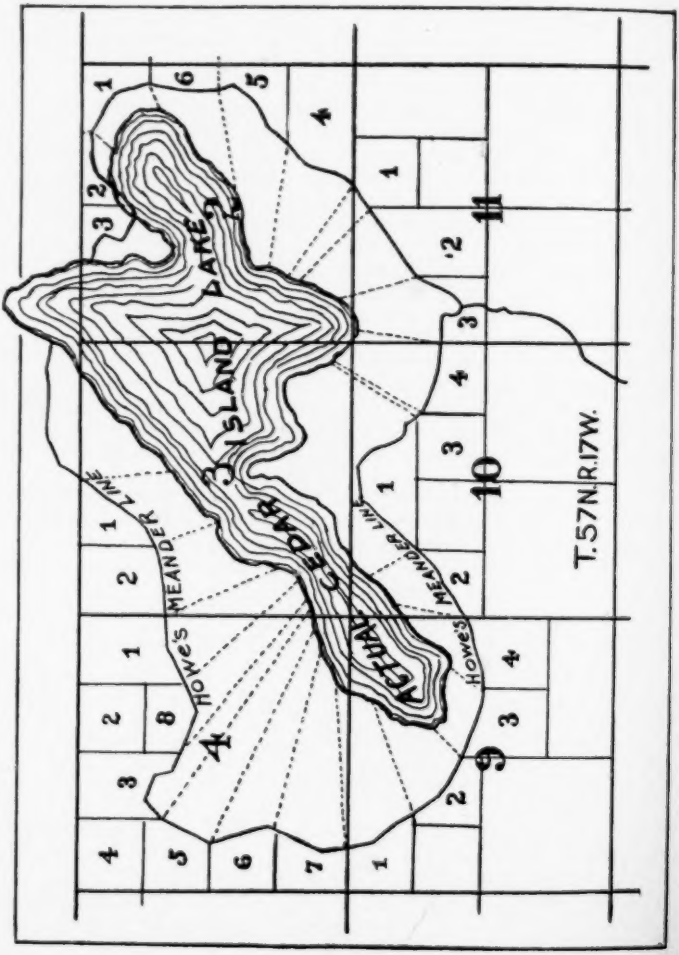
"It is further ordered, adjudged, and decreed that the defendants have no jurisdiction or authority to meddle with said lands or to make the survey complained of in the bill of complaint herein; and

"It is further ordered, adjudged, and decreed that the injunction heretofore issued in this cause be and the same is hereby made perpetual, and

that the said defendants and their successors, representatives, and assigns be and they are hereby severally and perpetually restrained and enjoined from surveying or causing to be surveyed the lands hereinbefore described, or any part thereof." And for costs.

Appeal was then taken to the Circuit Court of Appeals and the decree affirmed. 109 Fed. Rep. 354. Thereupon the case was brought to this court.

The following drawing taken from petitioners' brief sufficiently illustrates the situation:



Mr. Chief Justice FULLER delivered the opinion of the Court:

The bill prayed for injunction and the establishment of the boundaries of complainants' lands. The decree granted a perpetual injunction, and, describing the fractional lots, adjudged that they "extend to and are bounded by and upon the actual waters of Cedar Island Lake." The deflection of the lines required by the decree is indicated on the diagram.

Sections 2395, 2396 and 2397 of the Revised Statutes specify the manner of making surveys of public lands, and prescribe the rules by which the form and boundaries of the tracts are determined. In this case no survey was in fact made, no meander line was in fact run, and no body of water in fact existed near the false meander line indicated. The line purporting to delimit the lake was from one mile to a quarter of a mile from the lake, and ran over high agricultural land, covered with ancient trees, which could not have grown in water. The theory of the decree is that the government is estopped by the pretended survey and plat to deny that these lots were bounded by the lake.

The Land Department must necessarily consider and determine what are public lands, what lands have been surveyed, what are to be surveyed, what have been disposed of, what remain to be disposed of, and what are reserved. The department has held that the land lying between the alleged meander line and the lake, some 1,200 acres, is government land, and has ordered it to be surveyed. *In re Burns*, 20 L. Dec. 28, 295; 23 L. Dec. 430. The execution of that order was restrained by the preliminary injunction herein, and that has been made perpetual by the decree.

We are confronted on the threshold with two objections to the maintenance of this bill, namely, the want of jurisdiction in equity, and the want of jurisdiction thus to interfere with executive administration.

Equity jurisdiction was invoked on the ground of lack of adequate remedy at law in that irreparable injury in the destruction of timber and exposure to fire by the survey, and multiplicity of suits were threatened.

In our opinion complainants failed to make out a case of liability to irreparable injury. The township was resurveyed by a county surveyor in 1893; defendant Croswell has made surveys in the township, locating the actual meanders of the lake; and he testified that this survey could be made by him "without any material injury to the soil or timber;" and that he would not "have to cut very much valuable timber." If complainants as owners of the 859.38 acres contained in their fractional lots became through that ownership owners of the 1,202 acres lying between those lots and the lake, the proposed survey would be but a fugitive and temporary trespass, lacking the elements of irreparable mischief, and of such long continuance as to become a nuisance.

And bills of peace will not lie where the legal remedy is otherwise adequate, and where the persons directly interested are not made parties, are not numerous, and assert separate and independent rights. *Hale* v. *Allinson*, 188 U. S. 56; *Cruickshank* v. *Bidwell*, 176 U. S. 73.

But, in the next place, was the Circuit Court justified in thus arresting the action of the Land Department in proceeding with a survey under the circumstances? In other words, can the Land Department be stayed in the discharge of a duty, not ministerial, but involving the exercise of judgment and discretion, on the ground that its jurisdiction has been lost by estoppel? We do not think so, and hold that complainants' contention that they are entitled to bound upon the lake involves a legal right, which cannot be properly passed on until after the department has acted.

Having participated in the proceedings before the department, complainants, after survey was ordered, obtained this injunction against further administrative action, on the ground of absolute want of power, and not of error in its exercise.

The administration of the public lands is vested in the Land Department, and its power in that regard cannot be divested by the fraudulent action of a subordinate officer, outside of his authority, and in violation of the statute. *Whiteside* v. *United States*, 93 U. S. 247; *Moffat* v. *United States*, 112 U. S. 24; *Hume* v. *United States*, 132 U. S. 406, 414. The courts can neither correct nor make surveys. The power to do so is reposed in the political department of the government, and the Land Department, charged with the duty of surveying the public domain, must primarily determine what are public lands subject to survey and disposal under the public land laws. Possessed of the power, in general, its exercise of jurisdiction cannot be questioned by the courts before it has taken final action. *Brown* v. *Hitchcock*, 173 U. S. 473.

In *Litchfield* v. *The Register and Receiver*, 9 Wall. 575, Litchfield sought an injunction to restrain the register and receiver of the United States land office at Fort Dodge, Iowa, from entertaining and acting upon applications made to them to prove pre-emptions to certain lands which lay within the land district for which they were respectively register and receiver. The bill averred that complainant was the legal owner of the lands; that they were not public lands, and were in no manner subject to sale or pre-emption by the government or its officers. The bill was dismissed for want of jurisdiction in equity, and this court affirmed the decree. Mr. Justice Miller said: "The principle has been so repeatedly decided in this court, that the judiciary cannot interfere either by mandamus or injunction with executive officers such as the respondents here, in the discharge of their official duties, unless those duties are of a character purely ministerial, and involving no exercise of judgment or discre-

tion, that it would seem to be useless to repeat it here." *Gaines* v. *Thompson*, 7 Wall. 347; *The Secretary* v. *McGarrahan*, 9 Wall. 298.

It was held that the fact that complainant asserted himself to be the owner of the tract of land, which the officers were treating as public lands, did not take the case out of that rule, where it was the duty of these officers to determine, upon all the facts before them, whether the land was open to pre-emption or sale; and further, that if the court could entertain jurisdiction, the persons asserting the right of pre-emption would be necessary parties to the suit.

Mr. Justice Miller further said: "After the land officers shall have disposed of the question, if any legal right of plaintiff has been invaded, he may seek redress in the courts. He insists that he now has the legal title. If the land department finally decides in his favor, he is not injured. If they give patents to the applicants for pre-emption, the courts can then in an appropriate proceeding determine who has the better title or right."

And: "It appears on its face, that the register and receiver have no real interest in the matter, but that persons not named are asserting before them the legal right to pre-empt these lands. These persons are the real parties whose interests are to be affected, and whose claim of right is adverse to plaintiff. If the court should hear the case, and enjoin perpetually the register and receiver from entertaining their applications, they have no further remedy. That is the initial point of establishing their right, and in this mode a valuable and recognized right may be wholly defeated and destroyed, without the possibility of a hearing on the part of the party interested. This is not a case in which the land officers represent these claimants. They have no such duty to perform."

The case has been frequently cited, and in, among others, *Carrick* v. *Lamar*, 116 U. S. 423, an application to the Supreme Court of the District of Columbia for a mandamus to the Secretary of the Interior to order the survey of an island in the Mississippi River, opposite the city of St. Louis, by an alleged settler thereon, who averred that he had applied to the department for a survey of the island, so that it might be brought into the market, and that on the hearing of the application the city contended that the island had been surveyed and set apart to it, under certain acts of Congress, which he denied, because, as he insisted, the island surveyed was then located above this island. The court refused to grant the writ, and its judgment was affirmed, this court holding that the question how far the title of the city to the island was affected by its being carried down river by the action of the current, required consideration and judgment on the part of the Secretary.

Noble v. *Union River Logging Company*, 147 U. S. 165, is not to the contrary, for that was a case where the executive department had con-

fessedly finally acted, and then attempted to resume jurisdiction, and an injunction was sustained. But the government raised no point as to the form of the remedy; deprivation of a vested legal right of property, acquired before any suggestion that it could be taken away, was threatened; and it appeared that the only remedy was through equity interposition. *Cruickshank* v. *Bidwell*, 176 U. S. 73, 80. In this case, whether the lands lying between the alleged meander line and the lake were public lands, or not, was for the Land Department to determine in the first instance, and if error was committed, this is not the way to correct it.

In our judgment the Circuit Court should not have taken jurisdiction, and therefore the

Decree of the Circuit Court of Appeals is reversed; the decree of the Circuit Court is also reversed, and the cause remanded to that court with a direction to dismiss the bill.

True copy.

Test:

Clerk Supreme Court, U. S.